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IN THE

# Supreme Court Of The United States

**October Term, 1972**

NO. 72-1258

GEORGE S. HEITZLER, JR.,
*Petitioner,*

v.

CINCINNATI BAR ASSOCIATION,
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO**

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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Petitioner, George S. Heitzler, Jr., respectfully prays that a Writ of Certiorari issue to review the *Per Curiam* Opinion and Order of the Supreme Court of Ohio, entered on the 15th day of December, 1972.

## OPINION BELOW

The *Per Curiam* Opinion and the final Order of the Supreme Court of Ohio, reported in 32 Ohio St. 2d 214, are set out in full in the Appendix at pp. A-119 to A-145.

## JURISDICTION

The Opinion and Order of the Supreme Court of Ohio were entered on December 15, 1972. A prompt Motion to Stay Execution Pending Appeal to this Honorable Court was filed in the Supreme Court of Ohio on December 22, 1972, and by Order entered on January 12, 1973, this Motion was denied. Appendix pp. A-145 to A-148. This Petition is filed within ninety (90) days of the date of entry of the final Order and Opinion. The jurisdiction of this Court is based upon 28 U.S.C. §1257(3), and Supreme Court Rules 19-27, among others.

## QUESTIONS PRESENTED

I. Because the Hearing Panel gave Petitioner the right to file a Brief on the merits of the grievance charges filed against him, but then decided the case on the merits without ever giving Petitioner the opportunity to file his Brief, and because the Hearing Panel violated their own ruling as to Briefs on the merits, Petitioner has been denied procedural due process, has been denied the effective assistance of counsel, and has been deprived of his right to counsel.

II. Because Gordon Scherer was a member of the Board of Commissioners and sat in on the very deliberations and voting of the Board of Commissioners, and because Scherer was a chief witness for the Bar Association, had testified as to alleged illegal activities of Petitioner before the Hamilton County Grand Jury, and was highly critical of the Prosecuting Attorney's

handling of the Grand Jury proceedings, then the deliberations of the Board were subject to grave questions concerning their impartiality and their deliberations, findings and recommendations as affirmed by the Supreme Court of Ohio, violated due process of law.

III. Because Petitioner was not given an opportunity to file exceptions to, or to attack the findings of fact and recommendations of the Hearing Panel before the Board filed its findings with the Supreme Court of Ohio, or in the alternative, because the Board of Commissioners failed to make an independent determination of the record, exhibits and transcript, then Petitioner was denied due process of law, notice and an opportunity to be heard, and was denied the right to counsel.

IV. Because the disciplinary proceedings conducted against Petitioner who was a Judge and not a practicing attorney were conducted pursuant to Gov. R. V of the Supreme Court Rules for the Government of the Bar of Ohio dealing with disciplinary procedure for attorneys rather than pursuant to Gov. R. VI dealing with the removal of Judges in a case where Petitioner is charged with violations of the Canons of Judicial Ethics, the entire disciplinary proceedings are void *ab initio* because of a lack of jurisdiction.

V. Because three members of the Board of Commissioners in the instant case had sat as the Hearing Panel in a companion case involving different disciplinary charges but growing out

of testimony already given in the instant case, then the Board must be considered tainted, and the entire proceedings were conducted in violation of Petitioner's Fifth and Fourteenth Amendment due process rights.

VI. The holding of the Supreme Court of Ohio that Petitioner left the appearance of unlawful cohabitation with Carol Chasteen, now Petitioner's wife, in violation of Canon 4 of the Canons of Judicial Ethics, is unsubstantiated and is violative of due process.

VII. Because Petitioner did not know of the unauthorized use of his name in connection with Harmony Loan Company of Kentucky, in which he sat as a member of the Board of Directors, and because the Ohio judicial standards permit a Judge to sit on Boards of Directors, and because Petitioner did not allow the power of his office or the influence of his name to be used to assist the business of another, and because the Supreme Court of Ohio based their opinion upon conduct which cannot be constitutionally prescribed, the holding that Petitioner violated Canons 13, 25, 33 and 34 is unfounded, violates due process and freedom of association.

VIII. Although Judge Heitzler, while a Judge in a Municipal Court in Ohio, signed numerous orders, only in uncontested cases, this will not support a finding and judgment against Petitioner for alleged violations of Canons 4, 13, 25, 26, 29 and 34, and such findings contravene due process.

IX. Because Petitioner hired a man who had a previous criminal record, but whose last felony conviction was in 1955 in a nonsensitive position, as an usher, then a finding that such conduct constituted a violation of Judicial Canon 12, is violative of due process.

X. Even assuming *arguendo* Petitioner has been guilty of some misconduct in office, the indefinite suspension levied upon him is far too severe a penalty, and as such, contravenes due process.

## STATUTORY PROVISIONS RELIED UPON

AMENDMENT I TO THE UNITED STATES CONSTITUTION. [Freedom of Religion, of Speech, and of the Press]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V TO THE UNITED STATES CONSTITUTION. [Appears in the Appendix p. A-66.]

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION. [Appears in the Appendix pp. A-66-67.]

OHIO REVISED CODE, SECTION 2701.11. [Appears in the Appendix pp. A-68-69.]

OHIO REVISED CODE, SECTION 2701.12. [Appears in the Appendix pp. A-69-70.]

GOV. RULE VI OF THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO.

"Pursuant to legislative authority provided by R. C. 2701.11 and 2701.12, the following rule is adopted, effective February 11, 1966.

1. (a) The written and sworn complaint required by R. C. 2701.11 shall be filed with the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court heretofore established under Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, who shall transmit such complaint to the Chairman of the Board. Six copies of the complaint shall be so filed. The complaint shall set forth specifically the grounds claimed to be cause for retirement, removal, or suspension of the Judge from office and time when and place where any act, acts, omission or omissions occurred which are alleged to be cause for such retirement, removal or suspension under R. C. 2701.12. * * *

(b) * * *

(c) * * *

2. Upon receipt of such written and sworn complaint by the Chairman of the Board of Commissioners on Grievances and Discipline of the Supreme Court, he shall, as soon as practicable, convene such Board and present to it the complaint. The Secretary of the Board of Commissioners shall send a copy of such complaint to the Judge against whom the complaint is made. The

Board shall then proceed to investigate the complaint. After completion of this investigation, if two-thirds of the members of such Board affirmatively determine that there is substantial credible evidence in support of the complaint, the Secretary of the Board of Commissioners shall certify to the Supreme Court the result of such investigation. The investigation conducted by the Board of Commissioners shall be private. * * *

3. The report of the Board of Commissioners on Grievances and Discipline shall be sent by certified mail to the Judge against whom the complaint is made at the same time such report is sent to the Supreme Court.

4. The Supreme Court shall, if the report finds there is substantial credible evidence in support of such complaint, appoint within a reasonable time after its receipt a Commission of five Judges, as provided in R. C. 2701.11.

5. The Chairman of the Commission of Judges appointed to determine the question of retirement, removal or suspension of a judge shall be designated by the Supreme Court. Such Chairman shall promptly after receipt of the notice of his appointment and the receipt of the complaint fix a day for the hearing. * * *

6. If the Commission of Judges determines by majority vote that grounds for retirement, removal or suspension without pay have been established by clear and convincing evidence as alleged in the complaint or as provided in R. C. 2701.12 the Commission of Judges shall make such order as in its judgment is necessary and proper. * * *

(7. through 13. omitted.)

## GOV. RULE V OF THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO.

"Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(1) * * *

(2) *Jurisdiction of Board.* The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, preserve the record, make findings and submit recommendations to this Court as hereinafter provided:

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension for an indefinite period from the practice of law, or judge, or

(b) concerning the mental illness of any attorney and counselor at law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State, or

(d) upon reference by this Court of conduct affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court * * *"

## STATEMENT OF THE CASE

On August 11, 1971, three members of the Cincinnati Bar Association filed a Complaint before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. Appendix pp. A-1 to A-7. Named as Respondent was George S. Heitzler, Jr., the duly qualified and elected Judge of the Court of Common Pleas, Division of Domestic Relations, of Hamilton County, Ohio.

The Complaint charged *inter alia* that Petitioner had allegedly violated certain Canons of Judicial Ethics:

(1) because of his conduct in the personal and private affairs of his life; and

(2) because of certain personal financial investments made in Harmony Loan Company—a Kentucky small loan company; and

(3) because of Petitioner's association with some of the officers and directors of Harmony Loan and also by allegedly permitting his name to be used publicly in connection with Harmony Loan Company; and

(4) because Petitioner signed certain Orders only in uncontested cases involving Harmony Loan of Kentucky while sitting as Judge of the Municipal Court during a prior term of office; and finally

(5) because Petitioner hired a man whose last felony conviction was in 1955 to act as a "glorified usher" for persons attending various court rooms in the Domestic Relations Court.

The Bar Association alleged that Judge Heitzler violated Canons 1, 3, 4, 12, 13, 25, 26, 33 and 34.[1]

Judge Heitzler timely filed an Answer denying the above charges. Appendix pp. A-7 to A-11.

Next, on October 4, 1971, two additional charges were leveled against Judge Heitzler in a Supplemental Complaint filed by the same three members of the Cincinnati Bar Association. Appendix pp. A-11 to A-13. The charges were later dismissed.

The Complaint and Answer and Supplemental Complaint and Supplemental Answer came on for a hearing commencing December 16, 1971, before a three-man Hearing Panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.[2] Testimony was taken for six days and on January 7, 1972, the hearings were concluded.

At the close of the hearings, Judge Heitzler moved to dismiss the Supplemental Complaint, but the Hearing Panel reserved a ruling on this Motion and instead set forth a *well-defined* schedule for filing *all Briefs* in the case both as to the merits of the Complaint *and* as to the Supplemental Complaint. Both the Bar Association and Judge Heitzler submitted Briefs concerning the Motion to Dismiss the Supplemental Complaint.

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[1]At the close of the hearings before the Panel, the Bar Association added Canon 29 to the other Canons of Judicial Ethics which Petitioner allegedly violated.

[2]Hereinafter referred to as the Hearing Panel. The transcript of these hearings has been requested by Petitioner to be certified and transmitted to this Honorable Court as part of the record in this case. Therefore, all transcript references hereinafter designated as "T-____", refer to the transcript of testimony taken before the Hearing Panel.

However, the Hearing Panel had provided that Petitioner was to have two weeks following notice of the ruling by the Panel on the Motion to Dismiss the Supplemental Complaint within which to file his Brief on the merits of those charges filed against him initially in the Complaint. The Bar Association was then to have two weeks after receipt of Petitioner's Brief to file an Answer Brief. T-1399-1408 inclusive.

Notwithstanding the above-stated and well-defined time schedule set out by the Panel on or about August 9, 1972, R. O. Klausmeyer, one of counsel for the Bar Association, prematurely filed the Bar Association's Brief on the merits of the charges in the Complaint and admitted this early filing in a cover letter written to the Panel. And on August 4, 1972, without notice of any kind to Petitioner, and without ever permitting Petitioner to file his Brief on the merits of the charges embodied in the Complaint, the Hearing Panel filed their Findings of Fact and Recommendation of Hearing Panel[3] with the Secretary of the Board of Commissioners on Grievances and Discipline, and *simultaneously* sustained Petitioner's Motion to Dismiss the Supplemental Complaint. The Panel thus quite erroneously stated that:

> "Both parties were also granted the opportunity to submit briefs * * * (2) on the merits of the Complaints, and (3) on the appropriate remedy should violations be found."

Petitioner was therefore denied the right to file a Brief on the merits—an uncontroverted fact.

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[3]Hereinafter referred to as Panel Findings.

The Hearing Panel ultimately dismissed some of the charges embodied in the Complaint, and dismissed the Supplemental Complaint entirely. Appendix pp. A-16 to A-37. However, the Hearing Panel did find that Petitioner had allegedly been guilty of misconduct:

(1) because Petitioner left the appearance of public co-habitation with his second and present wife at a time when he was still married to his first wife [although subject to a separate maintenance decree]. Thus, Petitioner, in his personal behavior in his everyday life, while a Judge, gave the appearance of impropriety, in violation of Canon 4 of the Canons of Judicial Ethics. The remainder of the charges revolving around Petitioner's private social life were dismissed. For this alleged violation taken alone, the Hearing Panel recommended a private reprimand; and

(2) because Petitioner associated with Harmony Loan Company of Kentucky, its officers and directors, while Petitioner was an Ohio Judge and also [allegedly] permitted his name to be used publicly in connection with Harmony Loan Company, although he was not active in management and infrequently attended director's meetings, and because some [*highly questionable*] statistical evidence was produced by an investigative reporter allegedly disclosing favoritism existing in Judge Heitzler's Court, and because he ate lunch with certain attorneys who appeared before Petitioner in Court, then Petitioner had [allegedly] allowed his office to be used to bolster the private prestige of Harmony Loan Company in [alleged] violation of Canon 25; further, he was [allegedly] not indifferent to private, partisan influences and his conduct [alleg-

edly] gave the impression that a named attorney could unduly enjoy Petitioner's favor in alleged violation of Canons 13 and 34; and, finally, because Judge Heitzler hired an ex-convict who admittedly had a criminal record [but whose last felony conviction was in 1955] as an "usher" for persons with business before the various Domestic Relations Court rooms, and who [allegedly] was involved in an attempted bribery incident, and who was fired thereafter, then Petitioner allegedly violated Canon 12 by hiring one whom he knew or should have known was not possessed of the required character and fitness in alleged violation of Canon 12. For all these alleged violations considered together the Hearing Panel recommended an indefinite suspension; and

(3) because, during a *prior term of office* while Petitioner was a Municipal Judge, in Ohio, and while a director of Harmony Loan Company of Kentucky, Petitioner signed orders only in uncontested cases involving garnishment proceedings, default judgments, etc., wherein Harmony Loan Company was a party. This constituted an alleged violation of Canons 4, 13, 25, 26, 29 and 34. No evidence of any harm done to any of the litigants was presented, but the Hearing Panel nonetheless, recommended a public reprimand for the signing of these orders.

The *final recommendation* of the Hearing Panel, viewing the charges "cumulatively" was that Petitioner be indefinitely suspended from the practice of law.

The *same day* the Panel Findings were filed with the Board of Commissioners on Grievances and Discipline,

August 4, 1972, a two and one half hour meeting of the seventeen-member Board of Commissioners on Grievances and Discipline[4] of the Supreme Court of Ohio was held. See the excerpt of the minutes, Appendix pp. A-96 to A-97. Only fifteen of the seventeen members were present. Two were absent and one Board member, Gordon H. Scherer, an attorney from Hamilton County, Ohio, although present, *allegedly* did not discuss nor vote in the proceedings. Nonetheless, Gordon H. Scherer who was present during the deliberations of the Board, had previously testified for the Bar Association as a prosecution witness and was also the person who had "previously played a key role in launching the scheduled Grand Jury investigation of the Hamilton County Domestic Relations Court" seeking to have Judge Heitzler indicted. See the news article, Appendix pp. A-98. The Ohio Grand Jury did *not* return a true bill and Gordon H. Scherer, in his testimony before the Hearing Panel was "very critical" of the Prosecutor's handling of the case. During his testimony before the Hearing Panel, Scherer quoted with obvious displeasure large portions of the Grand Jury report. T-900 to T-904. As well, Scherer was the only member of the seventeen-man Board that was from Hamilton County.

Furthermore, three members of the Board who sat in Case No. 168, the present case, had also sat as the Hearing Panel in Case No. 172, a pending companion case which was later dismissed but involving other disciplinary charges filed against Petitioner, and which charges grew out of and were a direct result of the testimony given in Case No. 168. Case No. 168 was

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[4]Hereinafter called the Board.

heard in December of 1971, and Petitioner gave testimony during the hearings. The hearings before the Hearing Panel in Case No. 172 were held in May of 1972. Then in September of 1972, the Board's determination was finalized in Case No. 168.

Because of the presence of Gordon H. Scherer, and because of the unfair composition of the Board, Petitioner challenges the impartiality of the Board and the impartiality of the Findings made by the Board.

Thus, on September 1, 1972, the Board filed their Findings of Fact and Recommendation of the Board[5] with the Secretary of the Board, and in turn, with the Supreme Court of Ohio, which report was virtually identical in each and every respect and almost verbatim with the one previously rendered by the Hearing Panel. Again, the recommendation was that Petitioner be indefinitely suspended from the practice of law. Appendix pp. A-38 to A-59.

On the same day the Board Findings were filed, Chief Justice C. William O'Neill entered an Order To Show Cause in the Supreme Court of Ohio wherein Petitioner was directed to show cause why he should not be indefinitely suspended from the practice of law. Appendix pp. A-60 to A-61.

Petitioner and his counsel did not learn of the action of the Hearing Panel *or* the Board until the night of September 1, 1972, *when they read in the newspapers* that the Board had filed their Board Findings with the Secretary of the Board, and in turn, with the Supreme

[5]Hereinafter called Board Findings.

Court of Ohio. No formal notice from the Secretary, or the Board, was received until September 5, 1972.

Immediately thereafter, one of the attorneys of record telephoned the Secretary of the Board and requested, upon behalf of Petitioner, a copy of the Panel Findings and was told the same was not available to Petitioner. The same day, Petitioner's counsel wrote to the Secretary of the Board again requesting that report, which request was also apparently ignored.

Thereafter, Judge Heitzler personally wrote to the Secretary of the Board requesting a copy of the Panel's Findings. Finally, on September 20, 1972, approximately forty five days after being filed with the Secretary of the Board, and nineteen days after the Board had filed its Findings, a copy of the Panel's Findings was sent to Petitioner.

On September 7, 1972, a *Per Curiam* Opinion was rendered by the Supreme Court of Ohio without notice or hearing in effect holding that Petitioner could:

> ". . . hear no further cases or other matters . . . until [the Supreme Court of Ohio] renders its decision and judgment in the matter." 31 Ohio St. 2d 187 (1972). Appendix, pp. A-61-62.

On September 8, 1972, Chief Justice O'Neill entered an Order without notice or hearing carrying into effect the mandate of the *Per Curiam* Opinion. Appendix pp. A-62 to A-63. A retired Judge of the Court of Common Pleas was then temporarily appointed to fill the vacancy.

Judge Heitzler responded by filing a *pro se* Motion for Reconsideration and for a Hearing, with the Supreme Court of Ohio (Appendix pp. A-64 to A-72) in which he stated that the action taken by the Court on September 7, 1972, was taken without notice, without giving him or his counsel an opportunity to be present, and that neither the Ohio Constitution, Article IV, Section 5, nor Governing Rule V or VI, upon which the removal was based, granted any authority either express or implied for the action taken by the Court. Petitioner further alleged that his removal contravened Article I, Sections 1 and 16, of the Ohio Constitution, and the Fifth and Fourteenth Amendments of the United States Constitution. This Motion was not granted.

On or about October 5, 1972, because of the withdrawal of Cincinnati counsel, newly obtained counsel of record sought leave to appear and argue in the Supreme Court of Ohio on behalf of Petitioner, and by Order dated October 6, 1972, the Motion was granted. Appendix p. A-73.

Next, on October 17, 1972, Petitioner filed a Motion to Quash and Dismiss the Findings of Fact and Recommendation of the Board . . . and Motion to Dismiss and Recuse Each and Every Board Member of the seventeen-man Board.[6] Appendix pp. A-74 to A-105.

In the Motion to Quash, Petitioner challenged the Board Finding that Petitioner had violated Canon 25 by being a member of the Board of Directors of Harmony Loan Company. Petitioner submitted that he had conformed to the basic judicial standard in the

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[6]Hereinafter referred to as Motion to Quash.

community because *eight other Judges in Cincinnati, Ohio*, sat on Boards of Directors of named lending institutions. An affidavit listing these eight other Cincinnati Judges who sat on these various Boards of Directors appears in the Appendix at pp. A-100 to A-101.

Petitioner also denied that he had permitted his name to be used in a prospectus in connection with the sale of debentures of Harmony Loan Company, and further denied that he permitted his name and biography to be used in these prospectuses. To the contrary, the address of Petitioner was incorrect and the biographical information was incorrect. Affidavits by Petitioner and by the Vice President of Harmony Loan Company conclusively proved that Judge Heitzler not only did not permit his name to be used by Harmony Loan Company, but in fact, he did not know of its use. Appendix pp. A-98 to A-99. Further, Petitioner contended that since Canon 25 of the Canons of Judicial Ethics did not specifically prohibit a Judge from being a member of a Board of Directors, but only prohibited one from allowing the power of his office or name to be used for influence, then upon the facts and evidence submitted, Petitioner was not guilty of a violation of Canon 25.

Also attacked in the Motion to Quash was the Board Finding concerning Petitioner's alleged violation of Canon 12 by hiring Rufus "Snowshoe" Smith as a "glorified usher" for the Domestic Relations Court, knowing that Rufus had a past criminal record. Judge Heitzler contended that he was merely conforming to the standard of hiring personnel working for Hamilton County and with those standards set by the American Bar Association for rehabilitation of convicts. An

affidavit listing the results of an investigation of the employment of ex-convicts in Hamilton County disclosed that *four other men* working for Hamilton County had prior criminal records—some involving serious crimes. Appendix pp. A-101 to A-103. As such, Petitioner submitted that he was not guilty of a violation of Canon 12 of the Canons of Judicial Ethics.

Petitioner thus asserted that his First, Fifth, Sixth, Ninth and Fourteenth Amendment rights had been infringed by the Board Findings—hence they should be quashed and dismissed.

As additional evidence, and in opposition to the Board Findings concerning the *alleged* impression of impropriety created, Carol Chasteen Heitzler and Judge Heitzler's son both submitted affidavits to the effect that the Judge and Carol Chasteen were not living together prior to their marriage. Appendix pp. A-104 to A-105. For these reasons, Petitioner contended that no violation of Canon 4 occurred.

Judge Heitzler also challenged, in the Motion to Quash the removal Order of September 8, 1972, prohibiting him from performing any judicial functions until the Supreme Court of Ohio acted on the merits of the disciplinary charges. Petitioner asserted that he was denied a hearing on the question of his removal temporary or otherwise, was denied those rights guaranteed to him by the applicable Ohio statutory procedure for the removal of a Judge (O.R.C. §2701.11 and §2701.12), and was denied the due process of removal of a Judge as required by the Rules of Court for the removal of Judges, Government Rule VI. Petitioner further asserted that Article IV, Section 5, of the Ohio

Constitution, concerning the rule-making authority of the Supreme Court of Ohio, could not serve as a basis for the suspension of a judge without notice or hearing, without the right to confront his accusers and without right to counsel. If it did so authorize the Supreme Court of Ohio to so act, then such Ohio Constitutional provisions were in derogation of the United States Constitution, and as well, in derogation of the constitutional rights of the people of the State of Ohio who chose Judge Heitzler as their duly elected and qualified Judge. As such, Petitioner contended that he had the right to remain in his judicial capacity unless and until he was removed in accordance with the statutes and rules of court of the Supreme Court of Ohio.

Petitioner prayed in his Motion to Quash that the September 8, 1972, Order be set aside; that the Board Findings and Panel Findings be quashed and dismissed; that Case No. 168 and Case No. 172 be dismissed because the proceedings were "tainted". Alternatively, Petitioner sought to dismiss and recuse each Board member in Case No. 168 and Case No. 172, and that the Board and Panel Findings be quashed and dismissed and the entire case remanded to a new and unbiased Board and Panel and, of course, that the removal Order of September 8, 1972, be rescinded.[7]

Petitioner next filed his formal objections to the Findings of Fact and Recommendation of the Board[8] on October 20, 1972. Appendix pp. A-106 to A-119. Petitioner objected to each and every facet of the dis-

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[7]No action was taken on the Motion to Quash until the Supreme Court of Ohio rendered its final opinion indefinitely suspending Petitioner on December 15, 1972.

[8]Hereinafter referred to as Objections.

ciplinary proceedings against him, and to each and every finding and recommendation rendered by the Board. Those arguments and other evidence presented in the Motion to Quash were incorporated by reference as part of the Objections, because the Supreme Court of Ohio had not yet ruled on that Motion.

Filed as part of the Objections was additional evidence which consisted of an affidavit of Rufus Leo "Snowshoe" Smith denying that while he was an employee for the Domestic Relations Court, he ever engaged in any [attempted bribery] activities, and an affidavit of Rufus' attorney explaining that Rufus exercised his "Fifth Amendment" rights in the Panel Hearings when questioned about his alleged activities because of then pending Grand Jury proceedings against him *inter alia*. Appendix pp. A-116 to A-118. The Objections, like the Motion to Quash prayed for a dismissal of the proceedings against Judge Heitzler.

The Supreme Court of Ohio scheduled a hearing on the merits and oral argument for November 15, 1972. Counsel for Judge Heitzler and the same three members of the Cincinnati Bar Association, who originally filed the Complaint against Judge Heitzler, appeared, oral argument was held and was recorded. The matter was taken under advisement and on December 15, 1972, the Supreme Court of Ohio rendered their *Per Curiam* Opinion, and by Order entered by C. William O'Neill the same day, Judge Heitzler was indefinitely suspended from the practice of law. Appendix pp. A-119 to A-145. The Supreme Court of Ohio all at the same time denied Petitioner's Motion to Quash, overruled Petitioner's Objections, and affirmed the Board's find-

ings and recommendation that Petitioner be indefinitely suspended from the practice of law.

A prompt Motion to Stay Execution of the Order Pending Application to this Honorable Court, filed on or about December 22, 1972, for a Writ of Certiorari, was denied by Entry of the Supreme Court of Ohio, dated January 12, 1973. Appendix pp. A-145 to A-148.

It is the *Per Curiam* Opinion confirming the indefinite suspension of Petitioner from the practice of law, the final Order entered thereto, and the flagrant violations of Petitioner's various constitutional rights through the disciplinary proceedings conducted against him, that necessitates this Petition for a Writ of Certiorari.

## I.

**Because the hearing panel gave petitioner the right to file a brief on the merits of the grievance charges filed against him but then decided the case on the merits without ever giving petitioner the opportunity to file his brief, and because the hearing panel violated their own ruling as to briefs on the merits, petitioner has been denied procedural due process, has been denied the effective assistance of counsel, and has been deprived of his right to counsel.**

Petitioner submits that in a disciplinary proceeding involving a lawyer or a judge, that the defendant is entitled to due process of law and as such, once the Hearing Panel sets forth a well-defined time schedule for filing post-hearing briefs by all parties, the Hearing Panel must be required to abide by their own ruling

as to such time schedule and not be permitted to decide the merits of the case in advance of the filing of Petitioner's Brief.

The Hearing Panel ruled that the Bar Association would have two weeks following the Hearing Panel's ruling on the Motion to Dismiss the Supplemental Complaint within which to file its Brief on the merits of the disciplinary charges. Judge Heitzler was to have two weeks following the receipt of the Bar Association Brief within which to file his Brief. T-1402, 1403.

Notwithstanding this clearly-defined time schedule, the Hearing Panel, without the benefit of Briefs on the merits from either party, filed its Findings of Fact and Recommendation of the Hearing Panel with the Secretary of the Board of Commissioners on August 4, 1972. The Motion to Dismiss the Supplemental Complaint was sustained and the Hearing Panel *simultaneously* ruled on the merits of the disciplinary charges against Petitioner. (Appendix pp. A-18, A-33 to A-35) all in direct contravention of the Hearing Panel's own ruling. T-1402, 1403.

The Bar Association conceded this point when R. O. Klausmeyer, Counsel for the Cincinnati Bar Association, in his cover letter to the Board of Commissioners, dated August 9, 1972, enclosing the Bar Association Brief on the merits of the charges against Petitioner, admitted, and in fact, recited in part, the time-table set out at T-1402, 1403 and conceded that, by filing the Brief early,

> ". . . relator does not intend to impose any additional obligations on the part of respondent.

> It is simply that the brief has been ready for some time . . ."

Further, the Supreme Court of Ohio, in its *Per Curiam* Opinion readily admits that with respect to the filing of post-hearing Briefs, ". . . there was some confusion as to the time for filing briefs with the hearing panel, . . ." but the Supreme Court of Ohio concludes that,

> ". . . respondent was not prejudiced in this regard [because the] hearing panel and board determined the matter prior to the actual filing of briefs by either relator or respondent [and furthermore,] Gov. R. V confers no right upon either relator or respondent to file briefs either before the hearing panel or the board, and the filing of same is a matter within the discretion of the board or hearing panel." Appendix p. A-128.

The rationale of the Supreme Court of Ohio in this regard is clearly wrong. First, it must be conceded that the Hearing Panel gave Petitioner a *right* to file a Brief on the merits of the charges against him and then *cut off that right* by deciding the case on the merits without this Brief ever being filed, and without notification to Petitioner.

Second, while the Hearing Panel concededly filed their findings on August 4, 1972, and the seventeen-man Board also met the same day and "rubber-stamped" almost verbatim the Hearing Panel's report, nonetheless, the Bar Association filed its Brief on the merits on or about August 9, 1972, and the report of the Board of Commissioners was not formally filed

with the Supreme Court of Ohio until September 1, 1972, *AFTER* the Bar Association filed its Brief. Furthermore the Bar Association Brief became, as of August 9, 1972, a part of the record in this case, entitled to, and obviously given great weight by the Supreme Court of Ohio in rendering its final opinion. Does due process permit the Bar Association to brief the merits of certain disciplinary charges, and cut off Petitioner's right to respond and present his case?

Third, part of the rationale for submitting Briefs on the merits was to recommend what punishment Petitioner could receive assuming the charges embodied in the Complaint were found to be true. T-1403. Petitioner never had an opportunity to make any recommendations as to the penalty to be imposed until he was first able to raise the issue of the undue "harshness" of the indefinite suspension in Petitioner's formal Objections, (Appendix p. A-113) and Brief, filed months after the Hearing Panel had already decided the case on the merits and recommended an indefinite suspension, and long after the Board "rubber-stamped" the Hearing Panel findings. Thus, not only was Petitioner denied the right granted to him to brief and argue the very merits of the disciplinary charges against him, but he likewise was clearly deprived of making any recommendations whatsoever as to the penalties to be imposed if the charges against him were found to be substantiated.

The Supreme Court of Ohio attempts to justify the unconstitutional conduct of the Hearing Panel by begging the essential question involving the violation of Petitioner's procedural due process. If in fact the filing of a merits Brief and notice and an opportunity to be

heard were a matter of discretion as the Ohio Supreme Court holds, it is abundantly obvious that the discretion to require or not require the filing of merit Briefs should have been made at the close of the hearings and the Hearing Panel must be bound by their own ruling in this regard. If no Briefs were to be filed, then none should have been permitted. If merit Briefs were to be permitted, the Hearing Panel must be required to abide by their own ruling and Petitioner should have been allowed to file his Brief. And even if we assume *arguendo* that the filing of Briefs was and is discretionary, it would be hard to envision a case presenting a clearer abuse of such discretion by the Hearing Panel.

Fourth, the Supreme Court of Ohio attempts to further justify the Hearing Panel's conduct by holding that:

> "Respondent was given every opportunity to present any relevant evidence that he desired to present to the hearing panel." *Per Curiam* Opinion, Appendix, p. A-128.

This holding not only misses the issue of procedural due process here presented but creates a classic legal "red herring". Petitioner may have had an opportunity to present "any relevant evidence" at the hearing, but *after* the hearings, Petitioner, pursuant to the Panel's own ruling, had the right to file post-hearing Briefs commenting critically on the Bar Association's position, and also, assuming the charges could be substantiated, commenting on the penalty to be imposed. Quite obviously, Petitioner was not going to introduce *more* evidence via his post-hearing Brief — only comment critically upon the Bar Association's charges and what penalties could be imposed. The Supreme Court of

Ohio's holding in this regard completely confuses the issue involving the denial of Petitioner's procedural due process.

This Honorable Court and many other courts have repeatedly held since 1883 that procedural due process in a disciplinary hearing requires that one be given notice of the charges against him and an opportunity to be heard. *Ex Parte Wall*, 107 U.S. 265 (1883); *In re Ruffalo*, 390 U.S. 544 (1968) reh. den. 390 U.S. 961; *In re Ming*, 469 F.2d 1352 (7th Cir. August 2, 1972); *In re Echles*, 430 F.2d 347 (7th Cir. 1970); *Wilbur* v. *Howard*, 70 F. Supp 930 (D.C., E.D. Ky. 1947) rev'd. *Howard* v. *Wilbur*, 166 F.2d 884 (6th Cir. 1948).

Simply put, the Sixth Amendment right to counsel, and the Fifth and Fourteenth Amendment rights to due process of law require that the Hearing Panel be bound by its own rulings concerning the filing of merit Briefs in disciplinary cases. To permit the indefinite suspension Order rendered by the Supreme Court of Ohio against Petitioner to stand is tantamount to paying but lip service to procedural due process. For this reason alone, Certiorari should be granted.

## II.

**Because Gordon Scherer was a member of the Board Of Commissioners and sat in on the very deliberations and voting of the Board Of Commissioners, and because Scherer was a chief witness for the Bar Association, had testified as to alleged illegal activities of Petitioner before the Hamilton County Grand Jury, and was highly critical of the Prosecuting Attorney's handling of The Grand Jury proceedings, then the deliberations of the Board were subject to grave questions concerning their impartiality and their deliberations, findings and recommendations as affirmed by The Supreme Court Of Ohio violated due process of law.**

Petitioner submits that the impartiality of the deliberations of the Board of Commissioners are open to grave questions reaching due process proportions. Gordon H. Scherer, a member of the Board of Commissioners was a "key figure" in the grand jury investigation conducted to ascertain if Petitioner was engaged in any illegal activities in the Hamilton County Court. The Grand Jury did *not* return an indictment against Petitioner. (Appendix, p.A-98) During the disciplinary proceedings before the Hearing Panel, Scherer expressed obvious displeasure with the fact that Judge Heitzler was not indicted. T-899-903

Furthermore, not only was Scherer a member of the Board of Commissioners who sat through the entire deliberations of the Board concerning the merits of Petitioner's case and what penalty, if any, would be recommended concerning Petitioner, (See the exerpt of the minutes provided to counsel for Petitioner, Appendix, pp. A-96-97) but Scherer was the *only* member

of the Board from Hamilton County, Ohio. Obviously if the Board of Commissioners reviewed the evidence at all or gave even the most cursory consideration to the Hearing Panel findings, then Scherer's testimony was given great weight.

The only response from the Supreme Court of Ohio was to hold in conclusory terms that:

> "Although a member of the board was a witness for the relator, the minutes of the board clearly indicate that such member 'took no part in the discussion or voting' in the case." (Appendix p.A-128)

This conclusion cannot save the entire proceedings from the substantial possibility of prejudice that must arise when the chief prosecution witness is permitted to sit with the jury while the jury is sitting to decide the fate of another.

It is hard to believe, indeed impossible to imagine that the sole member of the Board of Commissioners from Hamilton County who had testified in an attempt to have Petitioner indicted, and who gave 40 pages of transcribed testimony before the Board of Commissioners in disciplinary proceedings seeking the removal of Petitioner from office sat stone faced, impartial and dispassionate through a 2½ hour meeting and never once gestured, indicated, or otherwise showed satisfaction or displeasure with the proceedings then in deliberation. It strains credulity to believe the other Board members could sit and impartially weigh what evidence they considered with Scherer present.

Petitioner submits that it is unnecessary to establish what actually transpired during the deliberations of the Board of Commissioners in a case such as this. The mere presence of the prosecuting witness or the prosecutor himself in the jury room during deliberations of the petit jury would alone, be enough to require a verdict to be set aside. If the due process of law required by *Re Ruffalo*, 390 U.S. 544 (1968), the first class citizenship for attorney's *Spevack* v. *Klein*, 385 U.S. 511 (1967), and the fundamental sense of fair play are to be more than constitutional rights to be exercised in a vacuum, then Certiorari should be granted on this point alone.[9]

## III.

**Because Petitioner was not given an opportunity to file exceptions to, or to attack the findings of fact and recommendations of the hearing panel before the Board filed its findings with The Supreme Court Of Ohio, or in the alternative, because the Board Of Commissioners failed to make an independent determination of the record, exhibits and transcript, then Petitioner was denied due process of law, notice and an opportunity to be heard, and was denied the right to counsel.**

On August 4, 1972, the Hearing Panel filed its 21 page Findings of Fact and Recommendation of the Hearing Panel with the Board of Commissioners on

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[9]The disciplinary procedures for lawyers and judges in the State of Ohio needs to be reviewed by this Honorable Court. For example, this Court held over four years ago in *In Re Ruffalo*, 390 U.S. 544 (1964) that Ruffalo was denied due process, yet the Ohio Supreme Court has refused to reinstate him. 45 Ohio Bar 1654, December 4, 1972, D.D. 57.

Grievances and Discipline of the Supreme Court of Ohio. (Appendix, p.A-16) Also filed with the 17-man Board was a *1408* page transcript of the testimony taken at the hearings.

The *very same day* the Hearing Panel's findings and the 1408 page transcript were filed, the Board met for a 2½ hour session wherein *matters other than Petitioner's case* were considered. See the extract of that portion of the minutes of the Board furnished to counsel, (Appendix, pp.A-96, 97). Interestingly, the Findings of Fact and Recommendation of the Board of Commissioners are almost an identical recital of the Findings of Fact and Recommendation of the Hearing Panel. Compare Appendix, pp.A-38 to A-59 with Appendix, pp.A-16 to A-37. Petitioner respectfully submits that no member of the Board of Commissioners (except the 3 Panel members) could have read the 1408 page transcript during the 2½ hour meeting, nor could they have considered the evidence in any manner other than perfunctorily. The obvious conclusion is that the Board has done far more than "adopt" the findings and recommendation of the Hearing Panel. Rather the Board instead has illegally and unconstitutionally delegated its supervisory and fact-finding capacity to the Hearing Panel and then "rubber-stamped" the Hearing Panel findings, all in violation of Petitioner's due process rights, to *full* and *fair* and *impartial* disciplinary proceedings.

Furthermore, Petitioner was not given any notice whatsoever of the filing of the *Hearing Panel* findings and was not given the right to file any objections or exceptions to the findings of the Hearing Panel. Quite

obviously if the consideration to be given a disciplinary case by the Board is to be anything other than a "rubber-stamping" process, then Petitioner deserved the right to object and except to the Hearing Panel's findings and report prior to its filing same with the Board.

But even beyond the above-stated procedural infirmities, Petitioner was given no notice that the *Board of Commissioners* itself was going to make its decision and was not given an opportunity to appear before the Board and present his views concerning the applicable law and facts before the Board rendered its Findings of Fact and Recommendation.

Therefore, not only was Petitioner not given an opportunity to file objections and exceptions with the Hearing Panel, but no notice of the filing of the findings of either the Panel or the Board was given, and clearly, the abbreviated time within which the entire record of this case was reviewed precluded any meaningful independent review of the testimony by the Board—an obvious duty the Board had, unless, of course, the three-man Hearing Panel is to report to the seventeen-man Board of Commissioners only as a matter of form.

Petitioner therefore submits that *In re Ruffalo*, 390 U.S. 544 (1968); *Spevack* v. *Klein*, 385 U.S. 511 (1967); *Ex Parte Wall*, 107 U.S. 265 (1883); and *In re Ming*, 469 F.2d 1352 (7th Cir. 1972) all would require nothing less than that the Board of Commissioners refrain from filing its Findings of Fact and Recommendation until it gave Petitioner notice, the right to be heard, the right to counsel, the right to object and except to the findings and recommendations

of the Panel, and the right to discuss the effect of the evidence adduced in the 1408 page transcript, as well as the right to Brief the issues of law. Alternatively, the Board had the duty to conduct an independent study of the evidence, the exhibits and the testimony. Otherwise the seventeen-man Board of Commissioners on Grievances and Discipline becomes nothing more than a three-man Hearing Panel and fourteen "yes-men" "rubber-stamping" the already grevious infringements of Petitioner's procedural due process.

The Supreme Court of Ohio attempts to answer these arguments at Appendix, pp.A-129 to 130. The Ohio Supreme Court places great reliance in *Mahoning County Bar Association* v. *Ruffalo*, 176 Ohio St. 263 (1964) for the proposition that the Supreme Court of Ohio is the ultimate fact-finder in disciplinary cases. But the Court concedes that the Board of Commissioners acts as an arm of the Supreme Court in effect eliciting these facts.

Petitioner respectfully submits that this is a clear-cut admission of the serious duty devolving upon the Board to independently view the evidence because three Board members sit as the Panel to hear and take testimony. These men ideally file their impartial and objective facts of a case. It takes little prescience of mind to readily admit that by the time the record and all the evidence reaches the Supreme Court of Ohio, it, like most other appellate records, is "cold" at best. Great weight must then be given to the factual findings below, but only if the facts have been subjected to the crucible of the adversary system and only if a fair and impartial analysis has been made—a facet not present in the instant case.

Furthermore, the Ohio Supreme Court argues in its Opinion, (Appendix, p. A-130, 131) that because Count 2 (relating to a Bar Association trip to Majorca, Spain), Count 3 (relating to two Mexico trips) and Count 11 (relating to alleged nepotism in the hiring of Petitioner's son and daughter) were dismissed, then this illustrates the fairness of the proceedings to which Petitioner was subjected. Quite obviously the three-man Hearing Panel who was present for the six days of testimony, felt that the evidence did *not* support misconduct findings as to Counts 2, 3 and 11. Hence, they were dismissed. But one cannot logically contend that because the Hearing Panel fully and fairly evaluated some of the evidence, and then dismissed certain charges, that this illustrates a "fair procedure." Rather, it illustrates only that the Bar Association had not carried its burden of proof.

Because of the serious constitutional questions raised in this argument, Certiorari should be granted.

## IV.

**Because the disciplinary proceedings conducted against petitioner who was a Judge and not a Practicing Attorney were conducted pursuant to Gov. R. V of The Supreme Court Rules for the Government of The Bar Of Ohio dealing with disciplinary procedure for Attorneys rather than pursuant to Gov. R. VI dealing with the removal of Judges in a case where Petitioner is charged with violations of the Canons of Judicial Ethics, the entire disciplinary proceedings are void AB INITIO because of a lack of jurisdiction.**

Petitioner submits that the Supreme Court of Ohio did not have jurisdiction to suspend or disbar a judge for alleged violations of the Canons of Judicial Ethics or for alleged conduct occurring while Petitioner held a judicial office under Gov. R. V. Instead, Gov. R. VI and Ohio Revised Code, Sections 2701.11 and 2701.12, which deal with the removal of Judges, are the sole, exclusive, and jurisdictional provisions for the removal of judges, and, therefore, all proceedings conducted under Gov. R. V are void.

To the contrary, the Supreme Court of Ohio, (Appendix pp. A-131 to 134) holds that Gov. R. V relating to disciplining attorneys and Gov. R. VI relating to judges are "not mutually exclusive". The court bases this conclusion upon an expansive reading of Gov. R. V and upon the Ohio Supreme Court decision in *Mahoning County Bar Association* v. *Franko*, 168 Ohio St. 17 (1958) which, in effect, holds that attorneys who are judges must maintain their status as attorneys

in order to comply with the statutory requisites that judges be attorneys. Then, holding that it,

> ". . . might be a more logical procedure, in cases of lawyers who are judges, to first proceed under Gov. R. VI for removal from office, and then proceed under Gov. R. V with respect to disciplinary action as a member of the legal profession, we find no error or prejudice . . ." Appendix p. A-133.

The Supreme Court of Ohio holds in effect that Petitioner's then counsel waived any error that was inherent in such procedure by proceeding under Rule V rather than Rule VI. Appendix pp. A-133, 134.

Respondent respectfully submits that the *Franko* case was not the law of the State of Ohio after the passage of Ohio Revised Code, Sections 2701.11 and 2701.12, and since the adoption by the Ohio Supreme Court of Gov. R. VI (formerly Rule XXI). O.R.C. Sections 2701.11 and 2701.12 were passed by the Legislature of the State of Ohio October 30, 1965, and Rule XXI was adopted by this Court on February 11, 1966, both after the *Franko* decision.

In addition, Ohio Constitution, Article II, Section 38, provides in effect that laws shall be passed providing for the removal of all officers including judges for misconduct, et cetera.

O.R.C. 2701.12 provides:

> "(A) Cause for removal or suspension of a judge from office without pay under Section 2701.11 of the Revised Code exists when he has,

*since first elected or appointed to judicial office* . . .

"(3) Been disbarred or suspended for an indefinite period from the practice of law for misconduct occurring *before such election or appointment.*" (Emphasis supplied.)

The obvious intent of the Legislature in the passage of such statute was to provide for those circumstances in which a judge was guilty of misconduct before *first* assuming judicial office for which conduct he could be suspended or disbarred, and that 2701.11 and 2701.12 come into play as the sole and exclusive method for removal of judges for misconduct occurring after the judge *first* assumed judicial office.

All of the alleged misconduct in this case is alleged to have occurred after Judge Heitzler *first* assumed judicial office.

When *Franko* was decided, the only rule in existence was what is now Gov. R. V, and there was no legislative enactment such as O.R.C. 2701.11 and 2701.12. Hence *Franko* was a correct pronouncement of the law at the time it was decided.

Petitioner does not deny that it is a judicial function to supervise lawyers and the Bar of the State, however, he does respectfully submit that it is a combined legislative and judicial function to discipline judges for alleged violations of the *Canons of Judicial Ethics* occurring *while they are judges.* Hence, the Supreme Court of Ohio would be without jurisdiction to suspend or disbar a judge under Gov. Rule V for conduct occurring while Petitioner was a judge which would have the

effect of removing him as a judge because a judge must, in Ohio, be in good standing at the Bar. Such a rule would permit circumvention of the clear dictates of the legislative enactments above referred to, and would be in the contravention of Gov. R. VI of the Rules for the Government of the Bar of Ohio.

The Constitution of the State of Ohio above referred to delegated the authority for removal of judges to the Legislature. As such, the Legislature adopted O.R.C. §2701.11 and 2701.12, and the Supreme Court of Ohio then adopted Gov. R. VI in accordance therewith.

We are not unmindful of the fact that Gov. R. V contains language relating to judges. However, when Gov. R. VI was adopted, that language of Rule V relating to judges was superseded and made ineffective by the provisions of Rule VI. In the case of *In re Nevius*, 174 O.S. 560 (1963), the Supreme Court of Ohio itself held that the adoption of a Supreme Court Rule superseded the disciplinary procedures existing by statute at the time Nevius was disbarred. The *Nevius* case involved his application for reinstatement. Hence, the Supreme Court of Ohio had already said that the later passage of a rule dealing with disciplinary proceedings causes an earlier provision in contradiction to that rule to be superseded.

Petitioner also submits that this matter is jurisdictional and cannot be waived.

In the instant case, Judge Heitzler was tried as a *lawyer* under Rule V *for violation of Canons of Judicial Ethics* which immediately gives rise to serious questions of law. A judge, in the State of Ohio, is guaranteed, by virtue of the aforementioned constitu-

tional provision, legislative enactments, and Gov. R. VI of the Rules for the Government of the Bar of Ohio, certain substantive and procedural rights governing disciplinary procedures, among which are the right to have five judges hear his case, to insist upon clear and convincing evidence, to establish any claim against him, which were the very rights denied Heitzler in the instant disciplinary proceeding. The law in the State of Ohio has been formulated to protect the electorate from being denied their right to choose their public officials, including judges. The cases establish the principle that a judicial officer or other officer of this state may not be removed, once he is elected to office, for conduct occurring prior to that election. Otherwise, the voters would be disenfranchised. Judge Heitzler was elected Judge of the Court of Common Pleas of Hamilton County the last time in November 1968, and took office the first of 1969. Much of the conduct alleged against him occurred prior to that date and cannot now be used to remove him from office. The conduct alleged against him occurring subsequent to that date entitles the voters and the citizens of this state to have removal proceedings against the judge conducted in accordance with the statutory provisions above mentioned and in accordance with disciplinary Rule VI of this Court.

The Ohio case law regarding the removal of a public official from office for alleged misconduct is clear and unequivocal on this point. The acts which form the basis of the alleged misconduct *must* have occurred during that official's present term of office.

This is clearly established in *State Ex. Rel. Stokes* v. *Probate Court*, 22 O.S. 2d 120, 258 N.E. 2d 607

(1970), in *McMillen* v. *Diehl*, 123 O.S. 212, 190 N.E. 567 (1934); and in *State Ex. Rel. Vogt* v. *Donahey*, 108 O.S. 440, and 140 N.E. 609.

In *Donahey* the Governor of Ohio attempted to remove the Mayor of Massilon for alleged misconduct which had occurred during a previous term of office. The Supreme Court of Ohio reversed the order of removal, holding that the Governor had no right to remove the Mayor for cause arising from a previous term, and saying,

> "It is not the purpose of the provision of the Constitution requiring the Legislature to enact laws providing for the prompt removal from office of officers guilty of misconduct . . . to vest in the Governor of the State or any other tribunal, a veto power upon the right of the electors of the municipality to elect their own City officials, the right being to remove for cause, which cause must arise during the term, and subsequent to the exercise of the power to elect vested in the electors of a municipality."

This principle was again recognized in the later case of *McMillen* v. *Diehl*, 123 Ohio St. 212, 190 N.E. 567 (1934), where the Supreme Court of Ohio held that to remove a Judge of the Court of Common Pleas, the cause of removal must have arisen during his term and after his election. In reaching this decision, the Supreme Court of Ohio cited the *Donahey* case, *supra*, and once again pointed out that to remove a public official from office for misconduct during a prior term would, in effect, veto the right of the public to elect their own officials.

All of the above cases are cited as precedent in the most recent decision in point handed down by the Supreme Court of Ohio. In *State Ex Rel. Stokes* v. *Probate Court*, 22 Ohio St. 2d 120, 51 O.O. 2d 180, 258 N.E. 2d 607 (1970), a complaint was filed against the Mayor of Cleveland alleging misconduct while in office. The alleged misconduct was committed in a previous term, and again the Supreme Court of Ohio affirmed the dismissal of the complaint on the basis of the *Donahey* and the *McMillen* cases cited herein. In reaching this decision the Court said:

> "In absence of clear legislative language making conduct in prior terms a ground for removal from office . . . [the conduct] alleged as ground for removal must occur during the term from which removal is sought and be subsequent to the exercise of the power to elect vested in the electors of the Municipality."

The *Stokes* case clearly indicates the present status of the law of Ohio which the Supreme Court of Ohio ignored in the instant case.

In those states where specific methods for removal of a judge are provided (*as is now the case in Ohio*), the courts have taken the view that misconduct in his official judicial capacity could not be the basis for disbarment or other disciplinary proceedings against an attorney, theorizing that to allow such proceedings would give to improper authorities the right to control, supervise, or remove judges; and, therefore, the proceedings must be in accordance with legislative enactments. *In re Jones*, 202 La. 729, 12 So. 2d 795 (1943); *In re Watson*, 71 Nev. 227, 286 P. 2d 254 (1955); *Weston* v. *Board of Governors of State Bar*, 177 Okla. 467,

61 P. 2d 229 (1936); *Chambers* v. *Central Committee*, 203 Okla. 583, 224 P. 2d 583 (1950).

In the *Chambers* case, *supra*, the Court granted a writ of prohibition directed to the Bar Association to halt proceedings involving a disciplinary complaint aganst Chambers. In so doing, the Court held that the Bar Association was without jurisdiction to proceed against the Judge because of his judicial position. The Court succinctly stated the dangers of permitting the removal of a judge by proceeding against him as a lawyer at 224 P. 2d 583, 586-587 as follows:

> ". . . as we have heretofore pointed out, [this] could not accomplish any good, but would result in nothing more than discord, and could result in confusion, pernicious partisan political activity concerning the judiciary, and other results not beneficial to the administration of justice, or desirable in connection with the service to be rendered by the bench and bar."

*In Re Jones*, 202 La. 729, 12 So. 2d 795, 797 (1943), the Court stated:

> ". . . to permit the disbarment of a district judge during his tenure of office, when one of the constitutional requirements for his holding such office is that he must be an attorney-at-law, would be to sanction the doing indirectly of that that cannot be done directly, that is, his removal from office by reason of disqualification."

See also: *In re Strahl*, 201 App. Div. 729, 195 N.Y.S. 385 (1922); *In re Gibbs*, 214 N.W. 850 (S.D. 1927); *State Bar* v. *Superior Court*, 278 P. 432 (Cal. 1929).

Petitioner therefore submits that permitting the Bar Association to proceed under Gov. R. V, rather than under Gov. R. VI, and O.R.C. 2701.11 and 2701.12, the specific precise, exclusive and jurisdictional provisions for the removal of judges is to circumvent the Ohio Constitution, ignore a clear legislative mandate, disregard the applicable rule of court and deprive Petitioner of due process of law. For these reasons Certiorari should be granted.

## V.

**Because three members of The Board Of Commissioners in the Instant Case had sat as the Haring Panel in a Companion Case involving different disciplinary charges but growing out of testimony already given in the Instant Case, then the Board must be considered tainted, and the entire proceedings were conducted in violation of Petitioner's Fifth and Fourteenth Amendment due process rights.**

Three members of the Board of Commissioners who discussed and voted in the instant case, Case No. 168, had sat as the Hearing Panel in Case No. 172, a companion case to the instant proceeding but based on a different set of facts. Petitioner submits therefore, that due process of law prohibits conduct such as this and raises additional questions as to the impartiality of the Board proceedings.

It is obvious that the three members of the Board of Commissioners who sat also as the Hearing Panel in Case No. 172, have played a dual role and have been privy to information that undoubtedly improperly influenced their judgment.

Thus, the Supreme Court of Ohio is clearly wrong when it holds at Appendix p. A-129 that, "Furthermore there could be no predudice to respondent in any event, since the action of the board was unanimous." If the Board is composed according to law, seventeen members sit on a Board of Commissioners on Grievances and Discipline. The very minutes of the Board itself show that two members were absent. Appendix, p. A-96. Next, Gordon H. Scherer, the "key prosecution witness" allegedly did not discuss nor vote in the proceedings. Appendix, p. A-97. This leaves only fourteen members. If we then eliminate the three Board members who played a dual role by sitting as the Panel in Case No. 172 and as Board members in Case No. 168, then we are left with only eleven impartial members—a far cry from a "unanimous" decision.

Equally specious is the holding of the Supreme Court of Ohio at Appendix p. A-129, which in essence states that there is "no indication" that the Board did not decide the merits of the charges against Petitioner on any basis other than the pleadings and evidence presented. This circular reasoning entirely ignores the thrust of Petitioner's argument, viz there is present in the instant case the substantial possibility that the proceedings were not conducted in an impartial manner. It is respectfully submitted that this court would never permit a jury verdict to stand under such circumstances, and further, should a judge have independent knowledge concerning a person whose rights were being considered, which knowledge might consciously or unconsciously prejudice his impartiality, then the Code of Judicial Ethics would prohibit such judge from passing on the merits of the charges in that situation.

The same issues are presented in the instant case. Case No. 168 was heard in December of 1971. Case No. 172 was heard in May of 1972. Determination by the Board was finalized and filed in Case No. 168 in September, 1972. The charges in Case No. 172 grew out of and were a direct result of the Board's investigation in Case No. 168.

Thus, the findings of the Board were based on evidence presented to a Board of Commissioners which was subject to the substantial possibility of prejudice—all in violation of Petitioner's Fifth and Fourteenth Amendment rights to due process. The Board members were sitting to determine Petitioner's very basic right to practice law, act as a judge, and make a living. Certainly those members of the Board who had played a dual role should have *sua sponte* recused themselves from any participation in the case. For these reasons Certiorari should be granted.

## VI.

**The holding of The Supreme Court Of Ohio that Petitioner left the appearance of unlawful cohabitation with Carol Chasteen, now Petitioner's wife, in violation of Canon 4 of The Canons of Judicial Ethics is unsubstantiated and is violative of due process.**

The Supreme Court of Ohio in their Opinion, Appendix p. A-134, holds that:

> "The findings of the board that the respondent's personal behavior in his everyday life, while a judge gave the appearance of impropriety and was not beyond reproach (Count I)

and constituted a violation of Canon 4, is supported by, and required by, the evidence."

While it is not Petitioner's desire to burden this Honorable Court with an analysis of 1408 pages of testimony, even the most cursory glance at the transcript citations that follow, pointedly demonstrate that the Supreme Court of Ohio is utterly mistaken regarding the "appearance of impropriety."

During the latter part of 1969 until September of 1970, Petitioner was legally separated from his wife and was living with his son, Geoffrey, who was partially invalided following serious surgery. Appendix, pp. A-44-46. The Board had no doubt that Petitioner and Carol Chasteen (now Mrs. Heitzler) gave Petitioner's son excellent and continuous care. Geoffrey's own doctor so testified and the Board agreed. Appendix, p. A-45.

Also uncontroverted is the fact that from late 1969 until 1970, Petitioner lived in an apartment complex containing 400 to 450 apartments and containing over 1,000 people. T-13 and 1042.

Out of all these people, the Bar Association could dredge up only two to testify as to any alleged appearance of impropriety. Both witnesses *had previously appeared before Judge Heitzler* in his judicial capacity, and both exhibited such bias as to render their entire testimony subject to the grave question of whether it had *any* probative value whatsoever.

The first witness who testified against Petitioner was Miss Gabriella Bode who moved into the apartment complex under the false name of Gabriella Greco (T-1024) in December of 1969. T-377.

Miss Bode stated:

> "Well, I saw her [Carol Chasteen] when I moved in. Well, I moved in two weeks before the first of the year. I saw her in January and then she was gone for a long time, and then I saw her back for several months, and then they moved." T-379.

This testimony is repeated on cross-examination. T-390.

Petitioner and Miss Chasteen were married in November of 1970, and continued to live in the apartment complex until April, 1971. Miss Bode's testimony makes it quite clear that any impression she acquired with respect to the conduct of Petitioner and Miss Chasteen had been acquired "several months before they moved" and during the five months prior to the time when Petitioner moved from the apartment complex. Since Judge Heitzler and Miss Chasteen were married during the time period described by Miss Bode, the apparent manifestation of cohabitation would not and could not be improper.

Miss Bode's testimony also reflects that she had appeared before Judge Heitzler prior to giving her testimony before the Hearing Panel. T-387. "I went in front of the Judge (with respect to child support) in July, 1970." Other examples of Miss Bode's bias against Petitioner are numerous. She testified that she became acquainted with Petitioner during his campaign for office, T-376. She further testified that she approached

the Petitioner on behalf of Mr. Nicolas Greco, who was a friend of hers. She stated on examination, T-381:

> "George, Judge Heitzler—I called him George —What are you doing to Nick? This is Nick, you know, what are you doing to him"

She then testified that Petitioner had ordered Mr. Greco to pay $35.00 per week alimony to his wife and that the two were still married at that point in time. She then said, T-382:

> "Why are you doing this" and "What are you doing to Nicholas?" And further at T-384, "I kept asking him over and over why he was doing the things he was doing and I told him I didn't think it was fair, or it was right."

The second witness who testified against Judge Heitzler was Mr. Nicholas Greco who moved into the apartment complex at the same time that Miss Bode moved in (T-568) and the two were neighbors (T-1025). The apartment rented by Miss Bode was "across the hall from Nick Greco." T-1025.

Mr. Greco testified that he had seen Carol Chasteen on Petitioner's balcony "several times" during the time period Mr. Greco and Judge Heitzler both occupied apartments in the apartment complex. *One time*, according to Mr. Greco, he saw Miss Chasteen "shaking out a rug in her robe." However, when he was closely questioned, Mr. Greco *could not specify precisely when the rug shaking instance occurred.* Hence, it is not clear, even in Greco's mind, as to whether this occurred *prior to or subsequent to* Petitioner's marriage to Miss Chasteen.

Other examples of Mr. Greco's bias are reflected in the transcript. Mr. Greco had been arrested six times for child neglect, T-587, and appeared before Petitioner in Municipal Court on August 11, 1968, on a charge of disorderly conduct, T-583. Mr. Greco appeared in Domestic Relations Court "18 or 19 times," T-590, and was held in contempt three times, T-596, and sentenced to 30 days in jail, T-592, which sentence was suspended by Petitioner.

Mr. Greco had, on several occasions, sought to have Miss Bode intercede on his behalf with respect to some legal matters dealing with Judge Heitzler's court. The result of such attempts was, however, a full explanation by Judge Heitzler of the necessary steps to be taken in the appellate process, T-577, and nothing more. *All of this had occurred prior to Mr. Greco's testimony* before the Hearing Panel.

Other obvious incidents of bias are reflected by the following remarks made by Mr. Greco which are taken from the transcript:

> "And I said I didn't care what it cost, that the decision the Judge had made was foul and he knew it was foul and I knew it was foul and everybody else knew it was foul. . ." T-601.

Mr. Greco was "extremely unhappy" with the result of his divorce case. T-602. He stated:

> ". . .this divorce stunk . . . in the beginning. I knew there was a payoff. I have no witnesses. I can't prove it . . ." T-602. "Look me in the eye, Judge, $750.00 you got, and Mr. Stone got $250.00 . . ." T-603. ". . . they didn't award her everything until the Judge got the payoff. . . ." T-607.

Further, Greco's personal opinion of Judge Heitzler was as follows. Greco stated:

> "How can he possibly hurt me? I said: "He done took everything I had, he wouldn't let me speak in Court, he wouldn't let my attorney speak" T-581.

Probably the most extreme example of bias on Mr. Greco's part is reflected at T-609 wherein Greco admitted that he saw Petitioner and his son leave the apartment complex for work, *but would not admit that Petitioner and his son lived together, a fact which is beyond question.*

The above incidents are but a few of the numerous instances of incredible and obvious bias on the part of Mr. Greco. As noted above, Miss Bode and Mr. Greco were *the only two witnesses* the Bar Association could dredge up to offer testimony regarding this charge.

The evidence presented by Petitioner was far more credible and impartial. Judge Heitzler called Mr. Charles Wurster who was the rental agent and manager of the apartment complex. His testimony, T-1020-1029, reflects the following: That approximately 1,000 people were residents of this apartment complex; that Miss Bode lived right across the hall from Mr. Greco; that Miss Bode registered for the apartment as Gabriella Greco; that later she changed this application to read Gabriella Bode; and that Vincent Greco, who is Nicholas Greco's brother, was living there with Gabriella Bode at the apartment complex. None of this testimony was controverted.

Additionally, Mr. Wurster's testimony reflects *that he never had a complaint of any kind* regarding the conduct of either Judge Heitzler or Miss Chasteen in any respect during the entire time Petitioner resided in the apartment complex.

Mr. Wurster further testified that Miss Chasteen:

> "Occasionally came in about 7:30 to 9:00 in the morning, and shortly thereafter leave with Jeff; and occasionally I saw her return with Jeff at approximately 4:30, and thereafter leave."

It is interesting to note that he never saw Petitioner and Miss Chasteen either enter or leave the apartment together prior to their marriage. T-1043.

Mr. Wurster's testimony regarding Judge Heitzler's son Jeff is completely corroborated by Dr. Gail Englander's testimony that Jeff must be "forced to take medication," T-1068, and "Miss Chasteen brought Jeff to the doctor's office," T-1069. "Also, Jeff is not capable of taking his morning medication . . . Miss Chasteen took him to psychiatrists, to Dr. Shelbourne, and called me regarding medication . . . and saw that he had his medication." T-1069.

Mr. Wurster's testimony regarding Miss Bode and her relationship with Vincent Greco is corroborated by Mr. Nicholas Greco who stated: "Mr. Vince Greco lived directly across the hall from me with a Miss or Mrs. Gay Bode." T-590.

Hence, of the three witnesses to testify on this charge, Mr. Wurster is by far the most credible. As

well, it is highly significant that out of one thousand (1,000) occupants of the apartment complex, the only two witnesses presented by the Bar Association to support the charge of Petitioner's alleged improprieties with Miss Chasteen were two people obviously biased against and displeased with Judge Heitzler, and of definitely questionable character.

It is of particular interest that Miss Bode chose to "assume" that the Petitioner and Miss Chasteen were "living together," and further, that Judge Heitzler's conduct was "improper" when in fact she made part of her observation while *she was herself living with another man who was in fact not her husband.*

It is also interesting to note that Mr. Greco, while making the same "observation" and "assumption" as was made by Miss Bode, was seeking Miss Bode's assistance to get a "better deal" from Judge Heitzler, to get him to go "his way," and to "see what you can do for me."

Mr. Greco's record, with respect to his marital problems, and his problems ensuing from his failure to support his children by a former marriage, are included herein as they relate to Petitioner. The most significant analysis of the testimony of the Bar Association's two witnesses to this charge is as follows: both lack credibility; both are biased; and neither can place the time when they say Petitioner and Miss Chasteen were living together, when they did live together for five months as husband and wife, as they were married.

The above facts congently demonstrate that the Bar Association failed to call other witnesses from the

apartment complex because the testimony would be unfavorable; i.e., no one else, out of 1,000 people, came forward to testify as to improper conduct on the part of Petitioner.

Furthermore, reference is made to the affidavits of Carol Heitzler and Geoffrey Heitzler in Petitioner's Motion to Quash and Dismiss, (Appendix pp. A-104, 105) in support of the proposition that Petitioner and Carol Chasteen Heitzler never cohabited prior to their marriage in November 1970.

It is, therefore, submitted that the holding of the Supreme Court of Ohio is so clearly erroneous and based upon such biased and incredible evidence so as to infringe due process. For this reason, Certiorari should be granted.

## VII.

**Because Petitioner did not know of the unauthorized use of his name in connection with Harmony Loan Company of Kentucky, in which he sat as a member of the Board of Directors, and because The Ohio Judicial standards permit a Judge to sit on Boards of Directors, and because Petitioner did not allow the power of his office or the influence of his name to be used to assist the business of another, and because the Supreme Court of Ohio based their opinion upon conduct which cannot be constitutionally prescribed, the holding that Petitioner violated Canons 13, 25, 33 and 34 is unfounded, violates due process and freedom of association.**

Petitioner has presented uncontradicted evidence via affidavits which are now part of the record in this

case wherein Judge Heitzler specifically denies any knowledge of the use of his name in any prospectuses, (Appendix p. A-98) and the Vice-President of Harmony Loan says by affidavit that the publication of all the names of Board members was required by Kentucky securities law. Further, Mr. Spampinato admits that Judge Heitzler had no knowledge of the use of his name. Appendix p. A-99. See also T-461.

Despite this affirmative evidence, and despite the fact that the Supreme Court of Ohio holds at Appendix p. A-135 that serving on Boards of Directors is not prohibited by the Canons of Judicial Ethics, the Court nonetheless holds that Petitioner had an affirmative duty to insure that his name was not misused. Appendix p. A-136. This seems to be an arbitrarily strict holding in view of the fact that Judges obviously would and undoubtedly did invest in out-of-state enterprises.

Petitioner expressly denied that his conduct in any way suffered the impression that another person could improperly influence him and expressly denied as well that his judicial life was in any way affected by his social or business relationships.

Turning first to the implications of a judge associating and "lunching" with one's friends, the Supreme Court of Ohio found this conduct in violation of the Code of Judicial Ethics. Appendix, p. A-137. To the contrary, Petitioner submits that any attempt to regulate Petitioner's conduct in this regard violated Petitioner's freedom of speech and association. It is readily conceded that members of the legal profession are subject to regulation in order to maintain high standards

of ethical conduct. Yet, it must also be conceded that lawyers are "first class" citizens. This Honorable Court has so held. *Spevack* v. *Klein*, 385 U.S. 511 (1967).

*In Re Stolar*, 401 U.S. 23 (1971) an appeal was taken to the United States Supreme Court by an applicant for admission to the Ohio State Bar. The applicant refused in part to disclose to the Ohio Bar Committee a list of all organizations of which he was or had been a member. He also refused to disclose all organizations of which he was or had become a member since registering as a law student.

Because of these refusals, both the Ohio Bar Committee and then the Ohio Supreme Court denied Stolar's application to take the bar examination. On appeal, this Honorable Court reversed and held at 401 U.S. 27, 28 that:

> "In our view requiring a Bar applicant to answer these questions is impermissible in light of the First Amendment, as was made clear in Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 81 S.Ct. 247 (1960). At issue in Shelton was an Arkansas statute that required every state teacher, as a condition of employment, to file an affidavit listing every organization to which he had belonged within the preceding five years. The Court noted that this requirement infringed upon the teacher's right to freedom of association because it placed 'pressure upon a teacher to avoid any ties which might displease those who control his professional destiny . . .' "

The analogy between *Stolar* and the case at bar is clear. To make one's luncheon friends the subject of a judicial

reprimand is tantamount to restricting those persons with whom a judge may associate. See e.g., Opinion 322 rendered by the American Bar Association on May 18, 1969, and reported in 55 A.B.A. Journal 666 - 668 (1969) entitled "Conduct of Judges".

Furthermore, even if we assume *arguendo* that the judge's luncheon habits could be characterized as creating the impression of favoritism, this alone is not sufficient to constitute an ethical violation. The mere impression that Judge George S. Heitzler's favor was unduly enjoyed by another is not enough. An overt act of favoritism *must* be shown. In *McMillen* v. *Diehl*, 123 Ohio St. 212, 190 N.E. 567 (1934) the issue was raised of judicial impropriety because a judge had borrowed money from several attorneys who participated in trials in which the judge made rulings. The Court stated at 190 N.E. 567, 568 that:

> "We strongly disapprove the practice of an incumbent judge borrowing money from lawyers who practice before him— . . . However, *in order to make a case for moral turpitude, evidence should be produced tending to show that, because of such borrowing, the incumbent discriminated in favor of the attorneys and others from whom he borrowed.* If such causal connection be shown, this would make a case of 'misconduct in office involving moral turpitude', as charged in the complaint." [Emphasis added.]

Applying the *McMillen* test to the case at bar, there is absolutely no evidence to support a finding of a violation of Canon No. 13, i.e. that Petitioner "suffer[ed] his conduct to justify the impression that his favor was unduly enjoyed by another."

The only statement referring to a violation of this Canon is that of the Board wherein it states, "Added to such evidence was the fact that respondent was a frequent luncheon companion of said attorney." The only evidence presented to sustain this charge was Petitioner's own testimony, T-36 and Frank Weikel's T-1298. At T-36 Petitioner stated in answer to a question regarding the members of his luncheon group:

> "It would be myself, Judge Mathews, Mr. Peter Donohue from my office, Mr. Crisci, Mr. Donald Swallow, Mr. Stone, Judge Chase Davies was there quite often, the late Chief of Police, Colonel Jacob Schott."

Also, Frank Weikel stated T-1298 that not only did he attend the luncheon regularly, but also Judge William S. Mathews, Mr. Ralph Crisci, Judge Paul Gilday, Mr. Swallow, Mr. Stone attended. At T-1299 it is stated:

> "This was one of the reasons for me going to these luncheons because there was a lot of political figures that would come in and out, and so forth, and I would pick up quite a bit for the column, and on occasion you name the courthouse and they were there."

This was the only evidence presented to justify the impression of favoritism. Nowhere does the record reflect that anyone at anytime felt that this luncheon group justified the impression that:

> "There was one who practices before respondent who could unduly enjoy respondent's favor,"

Nor is there any testimony even inferring such an unjustifiable conclusion.

Petitioner thus submits that the evidence elicited with respect to Judge George Heitzler's luncheon companions violated his freedom to speak to whom he pleased, his freedom to associate with whom he chose, and the conclusion by the Board regarding any impression of favoritism violated the First and Fourteenth Amendments of the United States Constitution. Furthermore, no evidence has been presented to even intimate that having lunch with Judge Heitzler in anyway created or caused any alleged favoritism. The holding of the Supreme Court of Ohio in this regard is unconstitutional, violative of Ohio case law, and based on totally inadequate evidence.

Further, Petitioner was charged with being "not indifferent to partisan influences" in violation of Canon 34.

Petitioner presented the Chairman of the Domestic Relations Committee of Hamilton County, Edward C. Benson, who testified that he was "in court daily"; "never observed favoritism", T-1257, and that the Court was "very efficient", T-1271. He expressed his high opinion of the Judge and the Court, T-1271. In regard to favoritism he stated "I have never heard any from any other attorneys . . ." T-1280.

It would appear that if there was any favoritism, the Chairman of the Domestic Relations Committee who was present in court almost every day would have been aware of that favoritism.

Others who testified as to the non-existence of favoritism included the following attorneys: Dale Schmidt T-1181, Jerome Schimpf T-1183, Jon Jacobs T-1183,

Anthony Dittmeier T-1184, Marvin Kolstein, Robert Sand, Morris Sullivan T-1186 to 1187, all being active in Domestic Relations Court practice.

Even the Bar Association's witness, Richard Rawe, City Editor of the Cincinnati Post and Times-Star, who had published numerous articles concerning the investigations stated: "Whether there was actual favoritism, I was not able to determine it, No" T-687, and could not form an opinion as to favoritism T-693.

Mr. Benson's testimony is even more important regarding partisan influence at T-1271:

> "I had some misgivings about what my position would be in that Court since I did not know Judge Heitzler other than to say "Hello" to him, and hadn't done that in more than five or ten times since before he came on the bench. *I had been a very close personal friend of Judge George who was his predecessor and political opponent, so I didn't know exactly what my position was going to be.* As things turned out my reception under his regime was no different than any other that I had with any of the other judges and in the conduct of our Court of Domestic Relations Committee, he was interested in trying to put into effect certain changes in the methods of procedure of handling of cases which turned out very well, particularly on the hearing of motions, on settings of motions, and in conjunction with our committee so that we wouldn't be wasting a lot of time sitting around, and this has worked out very effectively." [Emphasis added.]

Petitioner submits that he did not violate Canons 13, 25, 33 or 34 of the Canons of Judicial Ethics and

as such the charges are unfounded, violate due process, and the freedom of association.

## VIII.

**Although Judge Heitzler, while a Judge of a Municipal Court in Ohio, signed numerous orders, only in uncontested cases, this will not support a finding and judgment against Petitioner for alleged violations of Canons 4, 13, 25, 26, 29 and 34, and such findings contravene due process.**

Petitioner is charged with having signed entries (orders) while on the bench as a municipal judge in a prior term of office in cases in which a company in which he was a director was involved in violation of Canon 4, 13, 25, 26, 29 and 34.

The Bar Association offered a report during the hearings regarding the entries signed by Judge Heitzler. This exhibit reveals conclusively that Petitioner tried *no contested case* involving the Harmony Loan Company. This court's attention is respectfully directed to T-369 and T-370 wherein the Court Clerk testified. The Clerk noted that the only entries Judge Heitzler signed were default judgments, garnishments, continuances and entries to set aside defaults and dismissals.

Mr. Morris Leher testified that he is the long-time Chairman of the Municipal Court Committee for the Cincinnati Bar Association (T-1157), and in that position he called dockets, and disposed of cases, and had a Judge sign the necessary entries (T-1159), and grant the defaults, continuances, and garnishments

(T-1161). He stated that he had no authority to sign any entry (T-1162), but that an attorney would make up an entry, present same to a Clerk who would assemble them in numerical order and take them to a Judge for signature (T-1175). In addition to his hearing of these cases, he also stated that two other attorneys heard these matters, and proceeded in the same manner as he had. T-1177.

The finding by the Board and the Ohio Supreme Court that Judicial Canons were violated in this regard is based on two misconceptions of the Ohio Law.

First, the Board, while admitting these acts of signing orders did not occur within Petitioner's current term as Common Pleas Judge, nevertheless held this charge to be a violation of Judicial Ethics. By this ruling the Board is attempting to exercise a veto power upon the right of the electors to elect their own Judges.

The Ohio case law regarding the removal of a public official from office for alleged misconduct is clear and unequivocal on this point. The acts which form the basis of the alleged misconduct must have occurred during that official's present term of office.

The leading case in point is *State Ex Rel. Vogt* v. *Donahey*, 108 O.S. 440, 140 N.E. 609, discussed *supra*. See also *McMillen* v. *Diehl*, 123 O.S. 212, 190 N.E. 567 (1934) discussed *supra*. Finally, see the recent decision of *State Ex Rel. Stokes* v. *Probate Court*, 22 O.S. 2d 120, 51 O.O. 2d 180, 258 N.E. 2d 607 (1970) *supra*.

Interestingly, the Supreme Court of Ohio seeks to escape the above precedent by *relying* on Code 2701.12

*concerning the removal of judges* (Appendix p. A-140), when they are so insistent elsewhere in their opinion that Rule V not Rule VI (Rule VI having been promulgated for the removal of judges) is the applicable procedure for removing a judge from office. This glaring inconsistency in the reasoning of the Ohio Supreme Court only amplifies the fact that Rule VI is the proper rule regarding the removal of judges, but since Rule V was utilized instead, and since the Supreme Court of Ohio seeks to justify the use of Rule V by the Bar Association, then one can only conclude that Rule VI and its statutory counterparts, O.R.C. 2701.11 and 2701.12, have no applicability. Therefore, the *Stokes* case and its predecessors are the proper law to be applied and assuming *arguendo* Petitioner's conduct was erroneous, such acts occurred during a prior term of office and cannot now be raised. *State Ex Rel. Stokes* v. *Probate Court, supra.*

Secondly, Petitioner submits that the signing of the entries in the various proceedings constituted only a ministerial-administrative act and was not a violation of judicial ethics.

Petitioner submits that the law of Ohio is stated in 31 O. Jur. 2d 448 *Ministerial or Formal Acts.* It provides:

> "Mere formal or ministerial acts may be performed by a judge, even though he is interested in the cause, without making such acts subject to collateral attack. Thus, where the only action of an interested Judge is to make a formal entry of a default judgment in a case in which the proceedings are all regular, such judgment is not void and cannot be collaterally attacked."

In 31 O. Jur. 2d, at page 377, we find:

> "The rendition of a judgment is a judicial act; while its entry upon the record is merely ministerial."

Petitioner submits that the finding of the Board and Supreme Court of Ohio (Re: signing entries of Harmony Loan) is contrary to the law of Ohio, does not show any violation of the Canons of Judicial Ethics, and is not substantiated by the evidence, all in violation of due process.

## IX.

**Because Petitioner hired a man who had a previous criminal record, but whose last felony conviction was 1955, to a nonsensitive position, as an usher, then a finding that such conduct constituted a violation of Judicial Canon 12 is violative of due process.**

Petitioner admittedly hired Rufus Smith as a constable (usher) for his Domestic Relations Court. However this was done in the spirit of rehabilitation of ex-offenders and clearly within the guidelines set by the American Bar Association:

> "Employment is an important factor in successful reintegration of the offender in society. This study points out the fact that employment does not mean just getting a job, it also emphasizes the importance of the right job and maintaining a reasonable length of employment." American Bar Association Report, *Offender Employment Review*, (March, 1972)

In the American Bar Association's Commission on Correctional Facilities and Service, Coordination Bulletin

No. 5 (February, 1972), the following statement i found:

> "*Objective.* Both within the nation's crim inal justice community and among the public a large, there has been increasing recognition o the critical importance of employment to effec tive offender rehabilitation. Nevertheless, a variety of obstacles faces the released offende who wishes to rejoin the outside community an the world of responsible work. These includ employer attitudes and policies, adverse publi opinion, lack of up-to-date vocational prepara tion and, the offender's own psychological prob lems and hesitancy in the difficult challenge o rejoining the 'free community.' "

The law of Ohio is in accord as to rehabilitation. See *Kearns*, 28 Ohio St. 2d 121 (1971). Mr. Smith's record reveals that he was arrested 50 times, but was released outright six times, and had charges dismissed 29 times (T-361). Costs were remitted or assessed seven times (T-361), and Rufus was charged with only a single felony of which he was convicted on January 26, 1955. (T-362) served his time, was released, and since then there have been no felony convictions. Mr. Smith was last convicted of a misdemeanor in April, 1966, and assessed costs remitted (T-362). A search of his record (Hearing Panel Exhibit No. 13) reveals that for the most part his arrests were caused by domestic problems with his wife, who dismissed at least 12 of these charges (T-361).

During his service with Petitioner, there were no arrests or infractions of the law. It seems reasonable that a man whose only felony conviction was in 1955 should be given every opportunity to rehabilitate himself in a nonsensitive job.

The Supreme Court of Ohio relies upon the testimony of Dr. Reuben Richardson to support its finding of a violation of Canon 12. Dr. Richardson stated that Mr. and Mrs. Atkins "introduced him" to Rufus Smith (T-409), that "he gave Rufus Smith $1,000 in the presence of the Atkins" (T-411 and 412). What the Board and the Supreme Court of Ohio have failed to consider is the testimony of Mr. and Mrs. Atkins given before the Grand Jury, the Bar Association, and the Hearing Panel. Mrs. Atkins stated that she "did not know Rufus Smith," had never seen him or met him (T-962), "did not give any money to Rufus Smith or anyone . . . did not receive a receipt . . . that she testified to this before the grand jury." T-963-64.

Ben Atkins testified that he knew Rufus Smith, but had never discussed Rufus with Dr. Richardson or anyone, that he did not introduce Mr. Smith to Dr. Richardson—did not give Rufus any money—did not receive anything—did not see any money passed (T-987-88). It should be noted that Mr. Atkins also testified before the grand jury. The grand jury, after hearing this evidence, did not return any indictment against Rufus Smith, stating:

> "Whereas, there seems to be no lack of rumors of bribery or attempted bribery, there has not been sufficient concrete evidence to substantiate these charges or to justify the return of indictments . . . It is also to be noted that certain witnesses were violently prejudiced against the [Domestic Relations] Court and are engaged in personal vendettas. There is no question that some of these persons were looking for an opportunity to bribe but sometimes compounded the difficulty of weighing and shifting the evidence."

It is submitted that the grand jury did not find any probable cause that Mr. Smith should stand trial, although considering the same evidence received by the Hearing Panel.

As to Petitioner's reaction, when Mr. Smith was accused of misconduct, Mr. Wunker stated he "had a purported tape conversation with Mr. Smith," and Judge Heitzler replied: "Bring in the tape, and you and I will go straight to the county prosecutor" (T-534). *Instead, Mr. Wunker gave the tape to a local paper (T-536).* When some concrete evidence rather than pure conjecture was finally presented to the Petitioner regarding Rufus Smith, he was discharged.

We submit that having served his time, Mr. Smith deserved a chance to rehabilitate himself in a nonsensitive job—that the incident related by Dr. Richardson did not take place, and the Hamilton County Grand Jury so found—and that Petitioner's activities did not in any way violate Canon 12. Further, Rufus Smith has denied receipt of any of the alleged bribes. (Appendix, pp.A-116,117)

Again, Petitioner knows of many ex-offenders with past records who are employed by the County in various jobs. (See Appendix, pp. A-101-103). This is the standard in the community.

To hold that the employment by a Court of an exconvict who acts only as a runner is contrary to the modern thinking of those who believe that it is the responsibility of the Courts and of the Bar to do all within their power to make available responsible jobs for those unfortunate members of our society who have been convicted and who have paid their debt to society.

A finding in this regard is against the evidence, in violation of due process, and Certiorari should be granted.

## X.

**Even assuming *Arguendo*, Petitioner has been guilty of some misconduct in office, the indefinite suspension levied upon him is far too severe a penalty, and as such, Contravenes Due Process.**

The Bar Association after many months and thousands of hours of investigation, has examined, explored and probed in depth, every facet and recess of the Petitioner's life and all that probing, searching and examination brought to light only the few matters upon which the Supreme Court of Ohio saw fit to indefinitely suspend Petitioner.

The intense investigation of the Petitioner included a Grand Jury investigation, which investigation revealed absolutely no criminal conduct on the part of the Petitioner. The investigation included private investigators attempting to turn up any shred of evidence whatsoever which would incriminate or do harm to the Respondent. The local Cincinnati newspapers kept the entire investigation under the closest scrutiny and their reporters wrote daily reports regarding same. Judge Heitzler has not violated any Canons of Judicial Ethics.

Even if he was guilty of any violation of the Canons of Judicial Ethics, it shocks the sensibilities of one's imagination to think that the minor incidents upon which the proceedings have been predicated could re-

motely result in the removal of the Petitioner as a Judge.

It is necessary to look into Petitioner's background and past history to ascertain if the punishment that he has received is too severe.

Judge Heitzler received his law degree from Chase College in 1950 and has been involved in the practice of law ever since. He has served as Assistant County Prosecutor, First Assistant County Prosecutor (T-76 and 77) and has been in government service for approximately 18 years (T-77). He was also an Assistant United States Attorney for the Southern District of Ohio. He was a Municipal Judge for four years, and a Common Pleas Judge for four years.

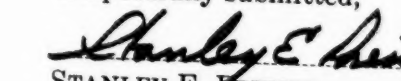
Judge Heitzler has been instrumental in assisting and aiding in Civic affairs of the City of Cincinnati since his entrance into the practice of law in 1950.

To permit the Supreme Court of Ohio's Order and Opinion to stand would result in an indefinite suspension of Petitioner as a lawyer and the removal of Petitioner as a Judge. Such consequences are not justifiable in the light of all the surrounding circumstances in this case, are unduly harsh, and deprive Petitioner of his property without due process of law.

## CONCLUSION

For all the above reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



STANLEY E. PREISER
1012 Kanawha Boulevard East
Post Office Box 2506
Charleston, West Virginia 25329
Telephone: 304/344-9651

Counsel for Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that I served three true and correct copies of the foregoing Petition for Writ of Certiorari, and three true and correct copies of the Appendix, upon R. O. Klausmeyer, Esquire, 2900 DuBois Tower, Cincinnati, Ohio 45202; John J. Getgey, Esquire, 615 Provident Tower, Cincinnati, Ohio 45202; and upon C. Donald Heile, Esquire, 3005 Carew Tower, Cincinnati, Ohio 45202, Counsel of Record for the Cincinnati Bar Association, by depositing same in the United States mail, postage prepaid by air mail, this 14th day of March, 1973.

STANLEY E. PREISER
Of Counsel for Petitioner

72-1258

MAR 15 1973

MICHAEL RODAK, JR., CLE

IN THE

# Supreme Court of The United States

October Term, 1972

No. .....

GEORGE S. HEITZLER, JR.,
*Petitioner,*

v.

CINCINNATI BAR ASSOCIATION,
*Respondent.*

## APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202

*Respondent*

No. 168

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202

*Relator*

**COMPLAINT AND CERTIFICATE**
**(Rules XVIII and/or XXI of**
**the Supreme Court of Ohio)**

Relator alleges that George S. Heitzler, Jr., attorney at law, duly admitted to the practice of law in the State of Ohio, presently Judge of the Court of Common Pleas of Hamilton County, Ohio, Division of Domestic Relations since January, 1969, formerly Judge of the Cincinnati Municipal Court is guilty of the following misconduct:

1. Judge Heitzler while Judge of the Domestic Relations Court was separated from his wife. Starting in the latter part of 1969, until September, 1970, one Carol Chasteen, a divorcee, was present in Judge

Heitzler's apartment frequently. She was at his apartment, and was seen by other residents of the apartment complex, almost daily, at all hours of the day and night. The conduct of both Carol Chasteen and Judge Heitzler was such as to cause members of the apartment complex and others to believe that they were living together. Relator says that Judge Heitzler's actions were in violation of Judicial Canons 1, 4 and 34.

2. Judge Heitzler took a trip to Majorca in October, 1969 at his expense with Carol Chasteen. The trip to Majorca was sponsored by the Ohio State Bar Association. The first reservations made therefor by Judge George S. Heitzler were for himself and his "niece." On or about October 24, 1969, Judge Heitzler appeared with Carol Chasteen (who was not his niece) at the Columbus Airport, and in the presence of members of the public and members of the Ohio State Bar Association and their wives, engaged in offensive conduct with Carol Chasteen. During the course of the trip to Majorca of October 24, 1969, until November 3, 1969, when they returned to Columbus, Ohio, Judge Heitzler's conduct was offensive to other members of the Ohio State Bar Association and their wives. Relator says that Judge Heitzler's actions were in violation of Judicial Canons 1, 4 and 34.

3. On at least two other occasions while a judge, at times unknown to Relator, but by Judge Heitzler's own admission, he took trips to Mexico at his expense with Carol Chasteen on planes chartered or owned by Blue Horizons, a travel club or group. One of these trips was to Acapulco and the other, according to Judge Heitzler's statements was to Porto Majorta. On both

of these trips members of the public were present. Relator says that Judge Heitzler's actions were in violation of Judicial Canons 1, 4 and 34.

4. On a number of different occasions on Friday and Saturday nights at the Hotel Gibson, in downtown Cincinnati, Judge Heitzler was observed in a state of intoxication at the hours of 3:00 and 4:00 in the morning and conducted himself in a loud and offensive manner while he was a judge, all in violation of Judicial Canons 1, 4 and 34.

5. On a number of different occasions Judge Heitzler, while a judge, was observed entering suites or rooms upstairs in the Hotel Gibson in downtown Cincinnati where he engaged in immoral acts, all in violation of Judicial Canons 1, 4 and 34.

6. During the course of Relator's investigation of these matters, subsequent to Judge Heitzler's voluntary appearance to testify before certain members of Relator, to-wit in September or October, 1970, during Judge Heitzler's incumbency as a judge of the Court of Common Pleas (Division of Domestic Relations) while Judge Heitzler and his wife, Ruth, were domiciled in Ohio, his wife Ruth obtained a Mexican divorce from him. Thereafter in November, 1970, Judge Heitzler married Carol Chasteen in Newport, Kentucky. Relator says that Judge Heitzler's part in the obtaining of a Mexican divorce was in violation of Judicial Canon 4.

7. Judge Heitzler, for a number of years, while a judge invested the sum of $30,000.00 in Harmony Loan Company, a Kentucky corporation, in the form

of preferred non-voting shares and sub-ordinated debentures. In 1964, he became a Director of Harmony Loan Company with offices in Newport, Kentucky. Harmony Loan Company is a small loan company. Judge Heitzler became a Director without any thought of participating in management because, as a non-resident of the State of Kentucky, under Kentucky law, he could not become an investor in the company unless he was a Director or other "insider." Judge Heitzler did not actively participate as a Director, however, he did attend directors' meetings at which decisons were made relating to the business operations of Harmony Loan Company and, on one occasion was compensated for his attendance at such a meeting. Investments were made by Judge Heitzler starting in December, 1964, up to April 27, 1970. In addition to his own investments he made investments in his name of funds actually belonging to his son and to Carol Chasteen, both residents of the State of Ohio. Relator says that Judge Heitzler's actions in this regard were in direct circumvention of Kentucky laws and constitute a violation of Judicial Canons 1, 4 and 34.

8. On the Board of Directors of Harmony Loan Company have been Joseph Becker, Bailiff for Judge Heitzler in both Courts, and Robert Stone, a Cincinnati attorney who is a personal friend of Judge Heitzler, who appears with some frequency before Judge Heitzler, and frequently has lunch in a public restaurant with Judge Heitzler.

James J. Mathews, President of Harmony Loan Company was Treasurer of Judge Heitzler's campaign in 1968 for the Court of Domestic Relations.

Ralph Crisci, Chief Referee in Domestic Relations Court was at one time Assistant Vice-President and attorney for Harmony Loan Company.

Sylvan Reisenfield, attorney for Harmony Loan Company appears in the Domestic Relations Court before Judge Heitzler.

Harmony Loan Company has from time to time issued brochures which contain the pictures and identifying names of its Directors and officers, including Joseph Becker, Robert Stone and James J. Mathews, and Judge Heitzler.

Relator says that in knowingly associating with Harmony Loan Company and its officers and Directors and in permitting the publicity of his name as a Judge in connection with the business of Harmony Loan Company, Judge Heitzler has violated Judicial Canons 13, 25, 33 and 34.

9. Harmony Loan Company frequently brings actions in the Cincinnati Municipal Court. While a Judge of that Court, and a Director of Harmony Loan Company, Judge Heitzler signed 487 orders in 357 cases wherein Harmony Loan Company was a party. These included default judgments, orders in aid of execution and one judgment entry for the plaintiff Harmony Loan Company after trial.

The foregoing conduct constitutes a violation of Judicial Canons 4, 13, 25, 26 and 34.

10. Judge Heitzler, after assuming the office of Domestic Relations Judge, hired as a Constable one

Rufus, alias "Snowshoe" Smith, a man with a lengthy criminal record including felony charges. At the time Smith was hired, Judge Heitzler was aware of Smith's criminal record yet hired him for political reasons. The man was subsequently discharged because of alleged bribery attempts on his part involving Domestic Relations cases. Judge Heitzler's hiring of Smith was in violation of Judicial Canon 12.

11. Judge Heitzler also hired his son to work in the Court of Domestic Relations, and his daughter, on a seasonal basis, putting both of them on the payroll thereof, in violation of Judicial Canon 12.

THE CINCINNATI
BAR ASSOCIATION

By R. O. Klausmeyer
2900 DuBois Tower
Cincinnati, Ohio 45202

By John J. Getgey
615 Provident Tower
Cincinnati, Ohio 45202

By C. Donald Heile
3005 Carew Tower
Cincinnati, Ohio 45202

**CERTIFICATE**

The undersigned, C. R. Beirne, President of the Cincinnati Bar Association, hereby certifies that R. O. Klausmeyer, John J. Getgey and C. Donald Heile, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the Complaint to its conclusion. After investigation,

Relator believes reasonable cause exists to warrant a hearing on such Complaint.

Dated August 11, 1971

C. R. Beirne, President

CINCINNATI BAR ASSOCIATION

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202

No. 168

*Respondent*

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202

*Relator*

**ANSWER**

Respondent admits that he is an attorney at law duly admitted to practice in the State of Ohio; that, since January, 1969, he has been a duly elected Judge of the Court of Common Pleas, Hamilton County, Ohio, Division of Domestic Relations, and prior to said date, was a Judge of the Cincinnati Municipal Court.

1. Respondent admits that since, and prior to, January, 1969, he has been separated from his wife and did employ one, Carol Chasteen, as an attendant for Respondent's afflicted son who resided with Respondent. That Respondent in so doing did not violate any Judicial Canon and did not live with the said, Carol Chasteen.

2. Respondent admits that in October, 1969, he did travel to Majorca but states that he made no reservation for a "niece" and at no time prior to, on, or after said travels did he engage in any kind of offensive conduct and, therefore, did not violate any Canon of Judicial Ethics.

3. Respondent admits that he did travel on airplanes with one, Carol Chasteen, but specially and specifically denies that, at any time with the said, Carol Chasteen or with any other person, he engaged in any course of offensive conduct.

4. Respondent admits that he has, on occasion, individually and with others, been to the Gibson Hotel, Cincinnati, Ohio, but denies that he was ever loud or offensive at any time, and further denies that he conducted himself in any manner, save and except, that in keeping with his elected position.

5. Specially and specifically, Respondent denies that he, at any time, engaged in any immoral conduct at the Gibson Hotel or elsewhere and demands strict proof thereof.

6. Respondent admits that during his service as a Judge of the Court of Common Pleas, Hamilton

County, Ohio, his wife, Ruth, obtained a decree of divorce from him and that thereafter, he did marry Carol Chasteen, but that in his said wife's divorce proceeding, he violated no Canon of Judicial Ethics.

7. Respondent admits that:

A. He had certain monies on deposit in the Harmony Loan Company.

B. That he did become a Director of the said Harmony Loan Company, but did not, at any time, actively participate in the business operations of said Company.

C. That he did not directly or indirectly circumvent Kentucky Statutes or in any of his actions or activities with Harmony Loan Company violate any Canon of Judicial Ethics.

8. Respondent admits the allegations contained in Paragraph 8 of said Complaint and Certificate filed herein, but specially and specifically denies that he violated any Canon of Judicial Ethics.

9. For want of knowledge, Respondent denies the representations made and contained in Paragraph 9 of said Complaint and Certificate and further asserts that the same cannot be herein considered for the reason that such acts, if any, did not occur within Respondent's current term of office. (*McMillen vs. Diehl, 128 O. S. 212; State ex rel Stokes vs. Probate Court, 22 O. S. 2d 120*)

10. Respondent admits that he hired as a Court employee, one, Rufus Smith and did place him in a

menial, non-sensitive position. That Respondent knew of minor law infractions committed by Rufus Smith but hired and retained him for many reasons other than political, and did discharge him when alleged bribery attempts, attributed to Rufus Smith, came to Respondent's attention. That such action violated no Canon of Judicial Ethics.

11. Respondent admits that:

A. He did for a limited period place his afflicted son in a Court position, counting, sorting and reconciling Bureau of Support accounts and checks, after Respondent was medically advised to activate, assist and closely supervise his said afflicted son.

B. He did during a summer vacation, when regular Court employees were vacationing, press into Court service his daughter, for the continuing and successful operation of Respondent's Court.

C. That none of said acts and actions violated any Canon of Judicial Ethics.

George S. Heitzler, Judge,
Court of Common Pleas
Division of Domestic Relations
Hamilton County, Ohio
*Respondent*

Bernard J. Gilday, Jr.
1500 American Building
Cincinnati, Ohio 45202
Counsel for Respondent

**CERTIFICATE**

Bernard J. Gilday, Jr., Counsel for Respondent, certifies that he did on the 9th day of September, 1971, forward to R. O. Klausmeyer, John J. Getgey and C. Donald Heile, authorized to represent Relator, The Cincinnati Bar Association, copy of said Answer by certified mail.

Bernard J. Gilday, Jr.
Counsel for Respondent

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202
*Respondent*

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202
*Relator*

Filed
Oct. 4, 1971
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff
Sec'y.
No. 168

**SUPPLEMENTAL COMPLAINT**

Subsequent to filing the complaint herein, the respondent engaged in the following additional acts of professional misconduct:

1. On August 16, 1971, respondent, through his attorney, Bernard J. Gilday, Jr., pursuant to an agreement with officers of the Cincinnati Bar Association, visited one of relator's attorneys, John J. Getgey, and, during the course of the conversation, attempted to cause relator to influence the Commissioners by suggesting to the Commissioners that this matter should proceed under Rule XVIII rather than Rule XXI. The respondent, through his counsel, threatened that if the matter proceeded under Rule XXI rather than under Rule XVIII, respondent would request a public hearing and "many things" would undoubtedly come to light that would involve the son of a member of the Grievance Committee and the son of an officer of the Cincinnati Bar Association.

2. Thereafter, on or about August 18, 1971, respondent, through his attorney, Bernard J. Gilday, Jr., in a telephone conversation with the aforementioned member of the Grievance Committee, further stated that the respondent had many friends on the

police force, intimating that the police, through respondent, would press other charges against the son of the above mentioned member of the Grievance Committee and that the "record" of the boy could be secured through police and court house contacts, all of which would embarrass many people.

THE CINCINNATI
BAR ASSOCIATION

By R. O. Klausmeyer
2900 DuBois Tower
Cincinnati, Ohio 45202

By John J. Getgey
615 Provident Tower
Cincinnati, Ohio 45202

By C. Donald Heile
3005 Carew Tower
Cincinnati, Ohio 45202

**CERTIFICATE**

The undersigned, C. R. Beirne, President of the Cincinnati Bar Association, hereby certifies that R. O. Klausmeyer, John J. Getgey and C. Donald Heile, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the Supplemental Complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such Supplemental Complaint, as well as the original Complaint.

Dated ....., 1971

C. R. Beirne, President
CINCINNATI BAR ASSOCIATION

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations) No. 168
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202
*Respondent*

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202
*Relator*

**ANSWER TO SUPPLEMENTAL COMPLAINT**

1. Respondent admits that through his counsel by invitation, he did confer with John J. Getgey on August 16, 1971, and during the course of said conversation through counsel, did suggest that all interests were best served in the disposition of this cause if proceedings were governed by Rule XVIII. Respondent specifically denies that any threat or suggestion thereof was made regardless of how said proceedings were conducted.

2. Respondent specifically denies that through counsel or otherwise, at any time, was any intimation. insinuation or suggestion ever intended or in fact ma[illegible]

concerning the institution or processing of any criminal charge against any person whomsoever.

Bernard J. Gilday, Jr.
1500 American Building
Cincinnati, Ohio 45202
Counsel for Respondent

**CERTIFICATE**

Bernard J. Gilday, Jr., Counsel for Respondent, certifies that he did on the 27th day of October, 1971, forward to R. O. Klausmeyer, John J. Getgey and C. Donald Heile, authorized to represent Relator, The Cincinnati Bar Association, copy of said Answer to Supplemental Complaint by certified mail.

Bernard J. Gilday, Jr.
Counsel for Respondent

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202
*Respondent*

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202
*Relator*

Filed
Aug. 4, 1972
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff,
Sec'y.
No. 168

**FINDINGS OF FACT AND RECOMMENDATION OF HEARING PANEL**

This matter comes before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio upon the Complaint and Certificate of the Cincinnati Bar Association alleging various vio-

lations by Respondent of the Canons of Judicial Ethics numbered 1, 4, 12, 13, 25, 26, 29, 33 and 34 (Canon 29 was added without objection at the Hearing) and further upon the Supplemental Complaint and Certificate of the Cincinnati Bar Association alleging "additional acts of professional misconduct" but citing no specific canons.

The Respondent filed timely Answers both to the original Complaint and to the Supplemental Complaint denying that Respondent had violated the referenced Canons of Judicial Ethics or that Respondent had engaged in the "acts of professional misconduct" alleged in the Supplemental Complaint.

Both matters came on to be heard commencing on December 16, 1971, before a duly appointed Hearing Panel of the Board of Commissioners. The hearings, which consumed a total of six days, were finally concluded on Friday, January 7, 1972; during the hearings, the Panel heard by testimony or stipulation more than fifty witnesses and received forty-seven documents into evidence.

The hearings were the subject of extraordinary public interest. At the request of Respondent, the location of the hearings was changed from Cincinnati, Ohio, where the Respondent is an active Judge of the Division of Domestic Relations of the Common Pleas Court, to Dayton, Ohio. Representatives of the Cincinnati news media, however, followed the hearings to Dayton and were regularly present at the Montgomery County Court House during the days of the hearings. To protect the secrecy and integrity of the hearings the Panel adopted rather strict security

measures which included banning reporters from the area of the hearings and admonishing orally and in writing all witnesses who testified to refrain from discussing the hearings or their testimony until the matter was fully adjudicated by final action of the Supreme Court of Ohio. The security measures were adopted by the Panel at the request, and with the prior concurrence, of Respondent and all counsel.

It is appropriate to note at this point that the Panel sought and received the full cooperation of all counsel and the Respondent during the long and sometimes trying days of hearings. The Panel recognizes that it was a particular hardship on all counsel to prepare and present their cases more than 50 miles from their home base; the scheduling of witnesses was made much more difficult, for example, because of this distance, since most of the witnesses had their residences in the Cincinnati area. The Panel, therefore, would like to express its appreciation to all counsel for their help and cooperation during the hearings and to the witnesses for their sacrifices in traveling to the place of hearing and their patience in awaiting their turn to testify. Without such cooperation, the hearings could easily have lasted many more days.

As indicated above, the hearings concluded on Friday, January 7, 1972, and the matters were duly submitted to the Panel on the testimony, stipulations and exhibits. While all evidence with respect to both Complaints was presented, the Panel reserved ruling on a motion by Respondent to dismiss the Supplemental Complaint. The ruling on the motion will be disposed of herein. Both parties were also granted the opportunity to submit briefs (1) on the motion to dismiss

the Supplemental Complaint, (2) on the merits of the Complaints, and, (3) on the appropriate remedy should violations be found.

## INTRODUCTION

Because of the length and complexity of the matters involved herein, the Panel believes an introductory summary will be helpful in understanding the formal Findings of Fact and Recommendations.

The Respondent is a Judge in the Domestic Relations Division of the Common Pleas Court of Hamilton County, Ohio, and was previously a Judge of the Municipal Court of Cincinnati, Ohio.

The original Complaint was submitted in the alternative under Rule XVIII and Rule XXI of the Rules of the Supreme Court of Ohio. The Supplemental Complaint did not specify under which Rule it was submitted. Both matters were heard as a Complaint and Supplemental Complaint under Rule XVIII. No objections were made by counsel or Respondent to the matters being so heard.

The original Complaint, which is based entirely on alleged violations of the Canons of Judicial Ethics, divides into three specific areas of alleged misconduct:

(A) The personal, social conduct of the Respondent;

(B) Respondent's activities relating to his judicial position; and,

(C) Respondent's financial investment in Harmony Loan Company, a Kentucky Corporation.

The personal, social conduct[1] of Respondent, which is the subject of Complaint, includes[2]: (1) The appearance of public cohabitation with Respondent's second and present wife, at a time when Respondent was still married to his first wife; (2) Public, offensive, personal conduct during an Ohio State Bar Association sponsored trip to Majorca, Spain, in 1969; (4) Public intoxication; and (5) Public immoral conduct at a downtown Cincinnati hotel. All of the acts complained of occurred while Respondent was on the Common Pleas Bench.

The Respondent's activities relating to his judicial position, which are the subject of complaint, include: (8) the knowing maintenance of a relationship with a Kentucky loan company which allowed the loan company improperly to exploit its relationship with a member of the judiciary, (10) the employment, on Respondent's judicial staff, of a person known to Respondent to have had a criminal record; and (11) the employment, on Respondent's judicial staff, of his son and daughter. Such acts took place while Respondent was a Judge of the Common Pleas Court. In addition, while on the Municipal Court, it is alleged (9) Respondent transacted judicial business involving Harmony Loan Company while having a variety of personal interests in that company. As to this allega-

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[1]The Panel dismissed for lack of evidence two additional charges (Paragraph 3 and 6) involving personal, social misconduct.

[2]The numbers used will correspond to the paragraphs in the Complaint.

tion, Respondent has asserted that such allegations cannot be considered "for the reason that such acts, if any, did not occur within Respondent's current term of office."

Finally, Respondent is alleged in the original Complaint (7) to have had personal financial investments in Harmony Loan Company in direct circumvention of Kentucky Laws. The Panel has reviewed the evidence as to this allegation and has unanimously concluded that there is a lack of sufficient evidence of a violation. The Panel, on its own motion, therefore, now dismisses this charge, Paragraph 7 of the original Complaint.

The Supplemental Complaint, which alleges "acts of professional misconduct," is based upon alleged acts of Respondent and his counsel, subsequent to the filing of the original Complaint, in attempting, by threats, to influence the procedural course of the original Complaint; i.e. allegedly to insure that the original Complaint be heard pursuant to Rule XVIII rather than Rule XXI.

For the purposes of the Panel Report, therefore, there remain four separate and distinct areas to be considered:

(A) The remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the original Complaint);

(B) The allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint);

(C) The allegations with respect to activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint); and

(D) The motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint.

The four areas will be considered, at first, separately both with respect to "Findings of Fact" and "Recommendations" and will also be considered collectively in a "Final Recommendation."

**Discussion of the Evidence and Findings of Fact**

*As to the remaining allegations with respect to personal, social conduct* (Paragraphs 1, 2, 4 and 5 of the Original Complaint)

The parties have stipulated that during the time periods in which the acts, alleged as a basis for Paragraphs 1, 2, 4 and 5 of the Complaint, took place, Respondent duly held the office of Judge of the Common Pleas Court of Hamilton County, Ohio, Domestic Relations Division.

The allegations contained in Paragraphs 1 and 2 of the Complaint took place within the period of time extending from the latter part of 1969 until September, 1970.

During this period Respondent was married to his first wife, though living apart from her. In January, 1970, Respondent and his first wife entered into a Sep-

aration Agreement (Exhibit 48). A decree of divorce dated October 13, 1970, terminated Respondent's marriage to his first wife. (Exhibit 49).

During this same period, Respondent maintained a close relationship with Miss Carol Chasteen.

Respondent characterized the relationship in terms of his being "romantically inclined" and "very close to in love." Subsequent to his divorce, Respondent, in fact, took Miss Chasteen as his second wife. To distinguish Respondent's two wives, however, we shall refer to Respondent's second wife as Miss Chasteen throughout this opinion.

Paragraph 1 of the Complaint alleges that the "conduct of both Carol Chasteen and [Respondent] was such as to cause members of the apartment complex [where Respondent resided apart from his first wife] and others to believe they were living together."

The Panel finds from the evidence submitted that Miss Chasteen was present in Respondent's apartment upon so many occasions, at such times and in such dress as to create the public appearance of residing therein, at least during a part of the period from latter 1969 until September, 1970.

An example of Miss Chasteen's intimate behavior during this period was Mr. Grecco's testimony that he witnessed Miss Chasteen shaking out rugs in her robe in the early morning.

Respondent offered, by way of explanation, testimony that Miss Chasteen was in Respondent's apart-

ment to care for Respondent's partially invalided son,[3] and that such care required her presence both in the early morning and late evening. Respondent's son, who was partially invalided following serious surgery, lived with Respondent. The Panel has no doubt that both Respondent and Miss Chasteen gave excellent and continuous care to Respondent's son; the son's doctor so testified and the Panel was impressed by the devotion of both Respondent and Miss Chasteen as disclosed by the evidence.

Nevertheless, Respondent's testimony merely confirms the testimony of the other witnesses; that the personal behavior of Respondent, in relation to Miss Chasteen's presence in Respondent's apartment, gave the appearance of cohabitation and, therefore, impropriety.

Miss Chasteen, though present outside the hearing room, did not testify.

Paragraph 2 of the Complaint alleges that during an Ohio State Bar Association sponsored trip to Majorca from October 24, 1969, until November 3, 1969, on which Respondent was accompanied by Miss Chasteen, Respondent's "conduct was offensive to other members of the Ohio State Bar Association and their wives."

The Panel finds that there was credible evidence both that Respondent and Miss Chasteen comported themselves in an amorous manner (including, for example, an affectionate pat by Respondent of Miss

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[3]While Respondent characterized Miss Chasteen's care in terms equivalent to the care that would be rendered by a practical nurse, the evidence discloses that Miss Chasteen was not compensated for the services which she rendered.

Chasteen's allegedly bare posterior at the Columbus airport) and also that Respondent consumed intoxicating beverages while in Majorca with the usual attendant results of loudness and uninhabited actions.

The evidence, however, was equally balanced as to whether Respondent's conduct was excessive for such an outing or essentially different from that of the ordinary person, including members of the judiciary, under similar circumstances.

The Panel finds, therefore, as a matter of fact that the evidence does not support a finding against Respondent under Paragraph 2 of the Complaint.

Paragraph 4 of the Complaint alleges that Respondent at a downtown Cincinnati hotel "was observed in a state of intoxication at the hours of 3:00 and 4:00 in the morning and conducted himself in a loud and offensive manner . . ."

The evidence offered by Relator fell far short of sustaining the allegations of Paragraph 4. The only credible evidence came from one witness whom the Panel considered to be relating his honest opinion but whom the Panel also considered to be overzealous in his characterization of Respondent's behavior.

Many other witnesses testified in Respondent's behalf, indicating that their observations of Respondent at similar times and under similar circumstances did not bear out a complaint of improper conduct.

The Panel concludes as a matter of fact that the evidence does not sustain the allegations of Paragraph 4 of the original Complaint.

Paragraph 5 of the original Complaint alleges that Respondent engaged in "immoral acts" in suites or rooms of the same downtown Cincinnati hotel.

The most unfavorable conclusion to Respondent to be reached from the evidence under this charge is that on one occasion in an upstairs suite in the semi-privacy of a small group of two or perhaps three other persons, Respondent was indiscrete concerning his attire and language. Such an isolated and essentially private occurrence did not, in the Panel's opinion, amount to a violation of the Canons of Judicial Ethics.

The Panel finds, as a matter of fact, that the evidence does not sustain an allegation of impropriety under Paragraph 5.

In summary, with respect to the allegations and charges of the original Complaint concerning Respondent's personal, social conduct, the Panel finds that the evidence sustains only the allegations set forth in Paragraph 1; that the evidence presented under Paragraph 1 does prove a violation as charged of Paragraph 4 of the Canons of Judicial Ethics in that Respondent's personal behavior in his everyday life, while a Judge, gave the appearance of impropriety and was not beyond reproach; that the charges set forth in Paragraphs 2, 4 and 5 should be dismissed; and, that the charge set forth in Paragraph 3 was earlier dismissed by the Panel for lack of evidence at the close of Relator's case. The Panel makes no findings with respect to whether the evidence under Paragraph 1 sustains the charges that the conduct of Respondent also vio-

lated Canons 1 and 34, since the primary thrust of the evidence related to Canon 4.

*As to the allegations with respect to activities while on the Common Pleas Bench* (Paragraphs 8, 10 and 11 of the original Complaint)

Again, by stipulation, the parties have agreed that at all times material to Paragraphs 8, 10 and 11 of the original Complaint, Respondent held the office of Common Pleas Judge of Hamilton County, Ohio, Division of Domestic Relations.

Paragraph 8 alleges that Respondent knowingly and improperly associated "with Harmony Loan Company and its officers and directors and . . . [permitted] the publicity of his name as a Judge in connection with the business of Harmony Loan Company . . ."

Respondent's Answer admits the factual allegations of Paragraph 8 but denies such allegations constitute a violation of the Canons of Judicial Ethics.

Harmony Loan Company is a Kentucky Corporation, engaged in the small loan business.

Respondent served as a director of Harmony while a Judge for an extended period of time. However, during such time, Respondent did not participate in management and only infrequently attended directors' meetings.

Although not active in the business of Harmony, Respondent decidedly helped, by serving as a director, to promote the business interests of Harmony.

Frank Spampinato, who actually ran Harmony, testified that it was "Nice to have a distinguished Board." Implicit in such testimony is the conclusion that the presence of Respondent as a director coupled with the prestige of Respondent as a Judge enhanced the status of Harmony and promoted Harmony's business. This conclusion was corroborated by the testimony of witnesses Cornell and Weikel.

Further, Respondent permitted his name to be used in a Prospectus (Exhibit 4) used in connection with the sale of debentures of Harmony and had also permitted his picture, name and biography to be used in Harmony promotional literature (Exhibit 7).

Since Respondent was not an active, managing director, the Panel can only conclude, as a matter of fact, that Respondent knowingly remained on the Harmony Board for the purpose of allowing his prestige to bolster Harmony's stature and thereby increase its business.

The motivation for continuing such an association may well have been the fact, disclosed by the evidence, that Respondent had invested money in Harmony; whatever the motivation, however, the Panel concludes that Respondent used the power of his office and the influence of his name to promote the business of Harmony.

Included within the evidence submitted under Paragraph 8 was evidence given by witness Gerald White that an attorney co-director of Respondent on the Harmony Board of Directors received favored treatment by Respondent in Respondent's court. Witness White's

testimony was based on a random, extensive comparative analysis of the outcome of cases handled by the said attorney and by other attorneys. Added to such evidence was the fact that Respondent was a frequent luncheon companion of the said attorney.

There was testimony by a respected attorney who had practiced 30 years in Domestic Relations Court that he had observed no favoritism in Respondent's court and that he was in Respondent's court frequently enough to have observed such favoritism had it existed.

The Panel concludes, however, from all of the evidence, that Respondent was not indifferent to private, partisan influences and that his conduct justified the impression that there was one, who practiced before Respondent, who could unduly enjoy Respondent's favor.

Paragraph 10 and 11 of the original Complaint have to do with Respondent's hiring practices. It is admitted that Respondent employed, as a constable, one Rufus "Snowshoe" Smith, who had had a lengthy criminal record. Respondent subsequently discharged Smith.

The Panel finds that Respondent knew or should have known of "Snowshoe" Smith's criminal record. The criminal record, as introduced through witness Spencer, speaks for itself; suffice it to say that the record is bad in precisely those areas which would make an employee undesirable in the field of domestic relations.

"Snowshoe" Smith was called as a witness, but did not testify, claiming, and being granted by the Panel,

the protection afforded by the Fifth Amendment to the U. S. Constitution.

The evidence demonstrated to the satisfaction of the Panel that "Snowshoe" Smith was not possessed of the strictest probity; in no way can it be said that "Snowshoe" Smith was selected by Respondent with a view solely to his character and fitness.

Respondent attempted to justify "Snowshoe" Smith's appointment on the grounds of rehabilitation and the fact that he was merely a "go for". The very same concern for rehabilitation, if we accept Respondent's testimony corroborates Respondent's knowledge of "Snowshoe" Smith's record and should have put Respondent on notice that rehabilitation should have been attempted somewhere other than in Domestic Relations Court.

A "go for" as "Snowshoe" Smith was called is one who fetches the parties and their attorneys when it is time for their appearance.

The testimony in this matter points up convincingly the reason for Canon 12.

Reuben Richardson, M. D., a black doctor of medicine, testified that "Snowshoe" Smith solicited, and he, Dr. Richardson, gave to Smith, the sum of $1,000.00 to make things come out right in Richardson's divorce action.

There is no evidence that Respondent knew of this exchange of money; but, the evidence is clear that by the hiring of Smith, Respondent invited just such an occurrence.

Dr. Richardson's cynical words, "Way things were going, I had no other alternative" crys out more eloquently than the best of prose, for the careful selection of all judicially associated personnel lest the public entirely lose faith in the judicial system.

In addition to employing Smith, Respondent also employed from time to time his son and daughter. His son, who was partially invalided, was employed at the son's doctor's suggestion for therapeutic reasons; his daughter was employed primarily as summer relief help. While the Panel concludes that such employment may technically amount to nepotism, the Panel believes that such employment did not amount to an intentional exploitation of nepotism.

Summarizing, therefore, the Panel's findings with respect to activities of Respondent while on the Common Pleas Bench, the Panel finds: that Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; that Respondent violated Canon 13 by suffering his conduct to justify the impression that his favor was unduly enjoyed by another; that Respondent violated Canon 34 in that he was not indifferent to partisan influences; and, that Respondent violated Canon 12 by employing one whom he knew, or should have known, was not possessed of the required character and fitness.

*As to the allegations with respect to activities while on the Municipal Court Bench* (Paragraph 9)

The evidence is uncontradicted that during his term as a Municipal Judge and while also a member of the

Board of Directors of Harmony Loan Company, Respondent signed numerous judicial Orders involving Harmony Loan Company.

The evidence is conflicting, and, therefore, not probative, as to whether any of Respondent's actions involved contested matters.

The Panel, therefore, for the purposes herein finds only that Respondent signed numerous Orders (over 350 according to one witness) in cases in which Harmony was a party but finds also that there is no convincing evidence that Respondent rendered decisions in contested matters in which Harmony was a party.

Respondent asserts two defenses: that the allegations cannot be herein considered for the reason that such acts, if any, did not occur within Respondent's current term of office; and that the signing of the Orders was purely administrative and not judicial and, therefore, not violative of the Canons of Judicial Ethics.

The Panel disagrees with the latter defense. The signing of Orders imports the full weight of the judicial office to the Order. It is a judicial not administrative function. To the public, the distinction between contested and non-contested matters is a distinction without a difference; to the public, Respondent acted in violation of the spirit of the Canons of Judicial Ethics and with indifference to the ethical standards which "the people have a right to expect from" a Judge.

With respect to the defense that the acts, if any, did not occur within Respondent's current term, the Panel

finds as a factual matter that the acts did not occur within Respondent's current term. However, the Panel further concludes that the fact that the acts did not occur within Respondent's current term does not bar this charge. Respondent is not herein charged as a Judge under Rule XXI but rather as an attorney under Rule XVIII. Any limitation must, therefore, be that applied to attorneys for violations of the Canons of Ethics. Clearly the charge is timely as applied to an attorney and no claim is made by Respondent that it is not. The fact that the violations complained of happen to be violations of the Canons of Judicial Ethics—the observance of which is also imposed on attorneys when serving as Judges—does not shorten the limitation time or otherwise moderate or alter the defenses afforded attorneys under Rule XVIII.

The Panel, therefore, finds that Respondent signed numerous Judicial Orders, during his term as Municipal Judge, which involved cases in which a company, of which he was contemporaneously a director, was a party; that such acts constituted violations of Canons 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics; and, that the consideration of such acts is properly before this Panel.

*The Motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint*

The Motion to Dismiss the Supplemental Complaint raises two questions: whether the charge of "additional acts of professional misconduct" without reference to specific Canons is sufficiently explicit to apprise Re-

spondent of the charges and whether the evidentiary facts demonstrate a sufficient basis for a charge under any of the Canons.

The Panel has had to keep in mind the fact that Respondent, while both a Judge and a lawyer, at the time of the incidents involved, was also the client and was not an active participant in the colloquies that gave rise to the Supplemental Complaint.

The Supplemental Complaint is based entirely upon conversations which took place between Respondent's counsel and others. Respondent did not participate in these conversations.

The charge, which the Panel views as extremely serious, is that Respondent caused his counsel to make threats to members of the Cincinnati Bar Association allegedly for the purpose of causing this matter to be heard under Rule XVIII rather than Rule XXI.

Witness Wirthlan, in the view of the Panel, did, in fact, justifiably believe that a threat had been made against him, and his family, by Respondent's counsel and is to be commended for rejecting what he viewed to be a threat and bringing the matter before this Committee. The testimony concerning the conversation between Mr. Wirthlan and Respondent's counsel supports the conclusion that language was employed by Respondent's counsel which was reprehensible.

However, Respondent enters this conversation and the conversation alleged in the first paragraph of the Supplemental Complaint only by inference.

The Panel concludes, therefore, that the evidence fails to establish that Respondent directed the actions of his counsel which led to the filing of the Supplemental Complaint.

The Supplemental Complaint must, therefore, be dismissed. Since the Supplemental Complaint must be dismissed, we need not reach the question of the import of the words "further acts of misconduct".

## RECOMMENDATIONS

*As to the allegations with respect to personal, social conduct* (Paragraph 1 of the original Complaint)

The Panel has found that the conduct of Respondent in relation to Miss Chasteen's presence in Respondent's apartment gave the appearance of cohabitation and, therefore, impropriety in violation of Canon 4 of the Canons of Judicial Ethics. In mitigation, the Panel has had to consider the fact that Respondent was separated from his first wife, that during most of the period, in fact, Respondent and his first wife had executed a separation agreement and that Respondent subsequently married Miss Chasteen. The Panel, therefore, recommends a private reprimand for this violation, taken alone.

*As to the allegations with respect to Respondent's activities while on the Common Pleas Bench* (Paragraphs 8, 10 and 11 of the original Complaint)

The Panel has found that Respondent in his relationship with Harmony Loan Company and with one of

his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34, and in hiring "Snowshoe" Smith has violated Canon 12 of the Canons of Judicial Ethics.

The Panel can find no mitigating circumstances.

There were no compelling reasons for the maintenance of the Harmony relationships nor for the hiring of Smith. Indeed, there were compelling reasons which would have been evident even to the inexperienced and unsophisticated to have refrained from all three relationships.

The conduct of Respondent in establishing and continuing these relationships cannot help but have brought his court into disrepute. One Panel Member has written: "I feel that the Hamilton County Domestic Relations Court, its personnel, practice and procedures fall far below acceptable standards when we consider the same from an ethical point of view or from a public relations standpoint."

For these violations considered together, the Panel, therefore, recommends indefinite suspension.

*As to allegations with respect to Respondent's activities while on the Municipal Court Bench* (Paragraph 9 of the original Complaint)

The Panel has found that Respondent has violated Canons 4, 13, 25, 26, 29 and 34 of the Canons of Judicial Ethics by signing Orders in cases in which Harmony Loan Company, of which he was contem-

poraneously a director, was a party, albeit non-contested cases.

Again, there are no mitigating circumstances.

The actions of Respondent under this charge are again precisely the type that brings the legal system into disrepute.

However, the Panel has had to consider that the actions herein complained of are in the past and that there is no evidence of "harm done" to any litigants (of the testimony by the medical doctor under Paragraph 10 of the original Complaint).

The Panel recommends Public Reprimand for the violations alleged under this charge.

**FINAL RECOMMENDATION**

Viewing the charges cumulatively rather than individually, the Panel concludes that Respondent over an extended period of time has displayed continuing indifference to the Canons of Judicial Ethics, "as a proper guide and reminder for judges." The Panel, therefore, recommends that Respondent be indefinitely suspended from the practice of law.

All of the foregoing recommendations are made pursuant to the provisions of Rule XVIII of the Rules of the Supreme Court of Ohio.

Respectfully submitted,

Roger H. Smith, Chairman
Erle Bridgewater
John O. Henry

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:

Complaint against:

GEORGE S. HEITZLER, JR.
*Respondent,*

CINCINNATI BAR ASSOCIATION,
*Relator.*

Filed
Sept. 1, 1972
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff,
Sec'y.
Case No. 168

**FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO**

This matter comes before the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio upon the Complaint and Certificate of the Cincinnati Bar Association alleging various violations by Respondent of the Canons of Judicial Ethics numbered 1, 4, 12, 13, 25, 26, 29, 33 and 34 (Canon 29 was added without objection at the hearing) and

further upon the Supplemental Complaint and Certificate of the Cincinnati Bar Association alleging "additional acts of professional misconduct" but citing no specific canons.

The Respondent filed timely Answers both to the original Complaint and to the Supplemental Complaint denying that Respondent had violated the referenced Canons of Judicial Ethics or that Respondent had engaged in the "acts of professional misconduct" alleged in the Supplemental Complaint.

Both matters came on to be heard commencing on December 16, 1971, before a duly appointed Hearing Panel of the Board of Commissioners. The hearings, which consumed a total of six days, were finally concluded on Friday, January 7, 1972; during the hearings the Panel heard by testimony or stipulation more than fifty witnesses and received forty-seven documents into evidence.

The hearings were the subject of extraordinary public interest. At the request of Respondent, the location of the hearings was changed from Cincinnati, Ohio, where the Respondent is an active Judge of the Division of Domestic Relations of the Common Pleas Court, to Dayton, Ohio. Representatives of the Cincinnati news media, however, followed the hearings to Dayton and were regularly present at the Montgomery County Court House during the days of the hearings. To protect the secrecy and integrity of the hearings the Panel adopted rather strict security measures which included banning reporters from the area of the hearings and admonishing orally and in writing all witnesses who testified to refrain from

discussing the hearings or their testimony until the matter was fully adjudicated by final action of the Supreme Court of Ohio. The security measures were adopted by the Panel at the request, and with the prior concurrence, of Respondent and all counsel.

It is appropriate to note at this point that the Panel sought and received the full cooperation of all counsel and the Respondent during the long and sometimes trying days of hearings. The Panel recognized that it was a particular hardship on all counsel to prepare and present their cases more than 50 miles from their home base; the scheduling of witnesses was made much more difficult, for example, because of this distance, since most of the witnesses had their residences in the Cincinnati area. The Panel, therefore, would like to express its appreciation to all counsel for their help and cooperation during the hearings and to the witnesses for their sacrifices in traveling to the place of hearing and their patience in awaiting their turn to testify. Without such cooperation, the hearings could easily have lasted many more days.

As indicated above, the hearings concluded on Friday, January 7, 1972, and the matters were duly submitted to the Panel on the testimony, stipulations and exhibits. While all evidence with respect to both Complaints was presented, the Panel reserved ruling on a motion by Respondent to dismiss the Supplemental Complaint. The ruling on the motion will be disposed of herein. Both parties were also granted the opportunity to submit briefs (1) on the motion to dismiss the Supplemental Complaint, (2) on the merits of the Complaints, and, (3) on the appropriate remedy should violations be found.

## INTRODUCTION

Because of the length and complexity of the matters involved herein, the Board believes an introductory summary will be helpful in understanding the formal Findings of Fact and Recommendations.

The Respondent is a Judge in the Domestic Relations Division of the Common Pleas Court of Hamilton County, Ohio, and was previously a Judge of the Municipal Court of Cincinnati, Ohio.

The original Complaint was submitted in the alternative under Rule XVIII and Rule XXI of the Rules of the Supreme Court of Ohio. The Supplemental Complaint did not specify under which Rule it was submitted. Both matters were heard as a Complaint and Supplemental Complaint under Rule XVIII. No objections were made by counsel or Respondent to the matters being so heard.

The original Complaint, which is based entirely on alleged violations of the Canons of Judicial Ethics, divides into three specific areas of alleged misconduct:

(A) The personal, social conduct of the Respondent:

(B) Respondent's activities relating to his judicial position; and,

(C) Respondent's financial investment in Harmony Loan Company, a Kentucky Corporation.

The personal, social conduct of Respondent, which is the subject of the Complaint, includes: (1) The ap-

pearance of public cohabitation with Respondent's second and present wife, at a time when Respondent was still married to his first wife; (2) public, offensive, personal conduct during an Ohio State Bar Association sponsored trip to Majorca, Spain, in 1969; (4) public intoxication; and (5) public immoral conduct at a downtown Cincinnati hotel. (The above numbers correspond to the paragraphs in the Complaint.) All of the acts complained of occurred while Respondent was on the Common Pleas Bench.

The Respondent's activities relating to his judicial position, which are the subject of the Complaint, include: (8) the knowing maintenance of a relationship with a Kentucky loan company which allowed the loan company improperly to exploit its relationship with a member of the judiciary; (10) the employment, on Respondent's judicial staff, of a person known to Respondent to have had a criminal record; and (11) the employment, on Respondent's judicial staff, of his son and daughter. Such acts took place while Respondent was a Judge of the Common Pleas Court. In addition, while on the Municipal Court, it is alleged (9) Respondent transacted judicial business involving Harmony Loan Company while having a variety of personal interests in that company. As to this allegation, Respondent has asserted that such allegations cannot be considered "for the reason that such acts, if any, did not occur within Respondent's current term of office."

Finally, Respnodent is alleged in the original Complaint (7) to have had personal financial investments in Harmony Loan Company in direct circumvention of Kentucky laws. The Panel reviewed the evidence as to this allegation and unanimously concluded that

there was a lack of sufficient evidence of a violation. The Panel, on its own motion, therefore, dismissed this charge, Paragraph 7 of the original Complaint.

The Supplemental Complaint, which alleges "acts of professional misconduct," is based upon alleged acts of Respondent and his counsel, subsequent to the filing of the original Complaint, in attempting, by threats, to influence the procedural course of the original Complaint; i.e., allegedly to insure that the original Complaint be heard pursuant to Rule XVIII rather than Rule XXI.

For the purposes of this Board Report, therefore, there remain four separate and distinct areas to be considered:

(A) The remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the original Complaint);

(B) The allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10, and 11 of the original Complaint);

(C) The allegations with respect to activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint); and

(D) The motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint.

The four areas will be considered, at first, separately both with respect to "Findings of Fact" and "Recommendations" and will also be considered collectively in a "Final Recommendation."

**Discussion of the Evidence and Findings of Fact**

*As to the remaining allegations with respect to personal, social conduct* (Paragraphs 1, 2, 4 and 5 of the Original Complaint)

The parties have stipulated that during the time periods in which the acts, alleged as a basis for Paragraphs 1, 2, 4 and 5 of the Complaint, took place, Respondent duly held the office of Judge of the Common Pleas Court of Hamilton County, Ohio, Domestic Relations Division.

The allegations contained in Paragraphs 1 and 2 of the Complaint took place within the period of time extending from the latter part of 1969 until September, 1970.

During this period Respondent was married to his first wife, though living apart from her. In January, 1970, Respondent and his first wife entered into a Separation Agreement (Exhibit 48). A decree of divorce dated October 13, 1970, terminated Respondent's marriage to his first wife (Exhibit 49).

During this same period, Respondent maintained a close relationship with Miss Carol Chasteen.

Respondent characterized the relationship in terms of his being "romantically inclined" and "very close to in love." Subsequent to his divorce, Respondent, in fact, took Miss Chasteen as his second wife. To distinguish Respondent's two wives, however, we shall refer to Respondent's second wife as Miss Chasteen throughout this opinion.

Paragraph 1 of the Complaint alleges that the "conduct of both Carol Chasteen and [Respondent] was such as to cause members of the apartment complex [where Respondent resided apart from his first wife] and others to believe they were living together."

The Board finds from the evidence submitted that Miss Chasteen was present in Respondent's apartment upon so many occasions, at such times and in such dress as to create the public appearance of residing therein, at least during a part of the period from latter 1969 until September, 1970.

An example of Miss Chasteen's intimate behavior during this period was Mr. Grecco's testimony that he witnessed Miss Chasteen shaking out rugs in her robe in the early morning.

Respondent offered, by way of explanation, testimony that Miss Chasteen was in Respondent's apartment to care for Respondent's partially invalided son, and that such care required her presence both in the early morning and late evening. Respondent's son, who was partially invalided following serious surgery, lived with Respondent. (While Respondent characterized Miss Chasteen's care in terms equivalent to the care that would be rendered by a practical nurse, the evidence discloses that Miss Chasteen was not compensated for the services which she rendered.) The Panel had no doubt that both Respondent and Miss Chasteen gave excellent and continuous care to Respondent's son; the son's doctor so testified and the Panel was impressed by the devotion of both Respondent and Miss Chasteen as disclosed by the evidence.

Nevertheless, Respondent's testimony merely confirms the testimony of the other witnesses; that the personal behavior of Respondent, in relation to Miss Chasteen's presence in Respondent's apartment, gave the appearance of cohabitation and, therefore, impropriety.

Miss Chasteen, though present outside the hearing room, did not testify.

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The Board finds that there was credible evidence both that Respondent and Miss Chasteen comported themselves in an amorous manner (including, for example, an affectionate pat by Respondent of Miss Chasteen's allegedly bare posterior at the Columbus airport) and also that Respondent consumed intoxicating beverages while in Majorca with the usual attendant results of loudness and uninhibited actions.

The evidence, however, was equally balanced as to whether Respondent's conduct was excessive for such an outing or essentially different from that of the ordinary person, including members of the judiciary, under similar circumstances.

The Board finds, therefore, as a matter of fact, that the evidence does not support a finding against Respondent under Paragraph 2 of the Complaint.

Paragraph 4 of the Complaint alleges that Respondent at a downtown Cincinnati hotel "was observed in a state of intoxication at the hours of 3:00 and 4:00 in the morning and conducted himself in a loud and offensive manner . . ."

The evidence offered by Relator fell far short of sustaining the allegations of Paragraph 4. The only credible evidence came from one witness whom the Panel considered to be relating his honest opinion but whom the Panel also considered to be overzealous in his characterization of Respondent's behavior.

Many other witnesses testified in Respondent's behalf, indicating that their observations of Respondent at similar times and under similar circumstances did not bear out a complaint of improper conduct.

The Board concludes as a matter of fact that the evidence does not sustain the allegations of Paragraph 4 of the original Complaint.

Paragraph 5 of the original Complaint alleges that Respondent engaged in "immoral acts" in suites or rooms of the same downtown Cincinnati hotel.

The most unfavorable conclusion to Respondent to be reached from the evidence under this charge is that on one occasion in an upstairs suite in the semi-privacy of a small group of two or perhaps three other persons, Respondent was indiscrete concerning his attire and language. Such an isolated and essentially private occurrence did not, in the Board's opinion, amount to a violation of the Canons of Judicial Ethics.

The Board finds, as a matter of fact, that the evidence does not sustain an allegation of impropriety under Paragraph 5.

In summary, with respect to the allegations and charges of the original Complaint concerning Respondent's personal, social conduct, the Board finds that the evidence sustains only the allegations set forth in Paragraph 1; that the evidence presented under Paragraph 1 does prove a violation as charged in Canon 4 of the Canons of Judicial Ethics in that Respondent's personal behavior in his everyday life, while a Judge, gave the appearance of impropriety and was not beyond reproach; that the charges set forth in Paragraphs 2, 4 and 5 should be dismissed; and, that the charge set forth in Paragraph 3 was dismissed by the Panel for lack of evidence at the close of Relator's case. The Board makes no findings with respect to whether the evidence under Paragraph 1 sustains the charges that the conduct of Respondent also violated Canons 1 and 34, since the primary thrust of the evidence related to Canon 4.

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Again, by stipulation, the parties agreed that at all times material to Paragraphs 8, 10 and 11 of the original Complaint, Respondent held the office of Common Pleas Judge of Hamilton County, Ohio, Division of Domestic Relations.

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Since Respondent was not an active, managing director, the Board can only conclude, as a matter of fact, that Respondent knowingly remained on the Harmony Board for the purpose of allowing his prestige to bolster Harmony's stature and thereby increase its business.

The motivation for continuing such an association may well have been the fact, disclosed by the evidence, that Respondent had invested money in Harmony; whatever the motivation, however, the Board concludes that Respondent used the power of his office and the influence of his name to promote the business of Harmony.

Included within the evidence submitted under Paragraph 8 was evidence given by witness Gerald White that an attorney co-director of Respondent on the Harmony Board of Directors received favored treatment by Respondent in Respondent's court. Witness White's testimony was based on a random, extensive comparative analysis of the outcome of cases handled by the said attorney and by other attorneys. Added to such evidence was the fact that Respondent was a frequent luncheon companion of the said attorney.

There was testimony by a respected attorney who had practiced 30 years in Domestic Relations Court that he had observed no favoritism in Respondent's court and that he was in Respondent's court frequently enough to have observed such favoritism had it existed.

The Board concludes, however, from all of the evidence, that Respondent was not indifferent to private, partisan influences and that his conduct justified the

impression that there was one, who practiced before Respondent, who could unduly enjoy Respondent's favor.

Paragraphs 10 and 11 of the original Complaint have to do with Respondent's hiring practices. It is admitted that Respondent employed, as a constable, one Rufus "Snowshoe" Smith, who had had a lengthy criminal record. Respondent subsequently discharged Smith.

The Board finds that Respondent knew or should have known of "Snowshoe" Smith's criminal record. The criminal record, as introduced through witness Spencer, speaks for itself; suffice it to say that the record is bad in precisely those areas which would make an employee undesirable in the field of domestic relations.

"Snowshoe" Smith was called as a witness, but did not testify, claiming, and being granted by the Panel, the protection afforded by the Fifth Amendment to the United States Constitution.

The evidence demonstrated to the satisfaction of the Panel that "Snowshoe" Smith was not possessed of the strictest probity; in no way can it be said that "Snowshoe" Smith was selected by Respondent with a view solely to his character and fitness.

Respondent attempted to justify "Snowshoe" Smith's appointment on the grounds of rehabilitation and the fact that he was merely a "go for". The very same concern for rehabilitation, if we accept Respondent's testimony corroborates Respondent's knowledge of

"Snowshoe" Smith's record and should have put Respondent on notice that rehabilitation should have been attempted somewhere other than in Domestic Relations Court.

A "go for" as "Snowshoe" Smith was called is one who fetches the parties and their attorneys when it is time for their appearance.

The testimony in this matter points up convincingly the reason for Canon 12.

Reuben Richardson, M. D., a black doctor of medicine, testified that "Snowshoe" Smith solicited, and he, Dr. Richardson, gave to Smith, the sum of $1,000.00 to make things come out right in Richardson's divorce action.

There is no evidence that Respondent knew of this exchange of money; but, the evidence is clear that by the hiring of Smith, Respondent invited just such an occurrence.

Dr. Richardson's cynical words, "Way things were going, I had no other alternative" crys out more eloquently than the best of prose, for the careful selection of all judicially associated personnel lest the public entirely lose faith in the judicial system.

In addition to employing Smith, Respondent also employed from time to time his son and daughter. His son, who was partially invalided, was employed at the son's doctor's suggestion for therapeutic reasons; his daughter was employed primarily as summer relief help. While the Board concludes that such employment

may technically amount to nepotism, the Board believes that such employment did not amount to an intentional exploitation of nepotism.

Summarizing, therefore, the Board's findings with respect to activities of Respondent while on the Common Pleas Bench, the Board finds: That Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; that Respondent violated Canon 13 by suffering his conduct to justify the impression that his favor was unduly enjoyed by another; that Respondent violated Canon 34 in that he was not indifferent to partisan influences; and, that Respondent violated Canon 12 by employing one whom he knew, or should have known, was not possessed of the required character and fitness.

*As to the allegations with respect to activities while on the Municipal Court Bench* (Paragraph 9)

The evidence is uncontradicted that during his term as a Municipal Judge and while also a member of the Board of Directors of Harmony Loan Company, Respondent signed numerous judicial orders involving Harmony Loan Company.

The evidence is conflicting, and, therefore, not probative, as to whether any of Respondent's actions involved contested matters.

The Board, therefore, for the purposes herein finds only that Respondent signed numerous orders (over 350 according to one witness) in cases in which Harmony was a party but finds also that there is no con-

vincing evidence that Respondent rendered decisions in contested matters in which Harmony was a party.

Respondent asserts two defenses: that the allegations cannot be herein considered for the reason that such acts, if any, did not occur within Respondent's current term of office; and that the signing of the orders was purely administrative and not judicial and, therefore, not violative of the Canons of Judicial Ethics.

The Board disagrees with the latter defense. The signing of orders imports the full weight of the judicial office to the order. It is a judicial, not administrative, function. To the public, the distinction between contested and non-contested matters is a distinction without a difference; to the public, Respondent acted in violation of the spirit of the Canons of Judicial Ethics and with indifference to the ethical standards which "the people have a right to expect from" a Judge.

With respect to the defense that the acts, if any, did not occur within Respondent's current term, the Board finds as a factual matter that the acts did not occur within Respondent's current term. However, the Board further concludes that the fact that the acts did not occur within Respondent's current term does not bar this charge. Respondent is not herein charged as a Judge under Rule XXI but rather as an attorney under Rule XVIII. Any limitation must, therefore, be that applied to attorneys for violations of the Canons of Ethics. Clearly the charge is timely as applied to an attorney and no claim is made by Respondent that it is not. The fact that the violations complained of happen to be violations of the Canons of Judicial Ethics

—the observance of which is also imposed on attorneys when serving as Judges—does not shorten the limitation time or otherwise moderate or alter the defenses afforded attorneys under Rule XVIII.

The Board, therefore, finds that Respondent signed numerous Judicial Orders, during his term as Municipal Judge, which involved cases in which a company, of which he was contemporaneously a director, was a party; that such acts constituted violations of Canons 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics; and, that the consideration of such acts is properly before this Board.

*The Motion to Dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint*

The Motion to Dismiss the Supplemental Complaint raises two questions: whether the charge of "additional acts of professional misconduct" without reference to specific Canons is sufficiently explicit to apprise Respondent of the charges and whether the evidentiary facts demonstrate a sufficient basis for a charge under any of the Canons.

The Board has had to keep in mind the fact that Respondent, while both a Judge and a lawyer, at the time of the incidents involved, was also the client and was not an active participant in the colloquies that gave rise to the Supplemental Complaint.

The Supplemental Complaint is based entirely upon conversations which took place between Respondent's

counsel and others. Respondent did not participate in these conversations.

The charge, which the Board views as extremely serious, is that Respondent caused his counsel to make threats to members of the Cincinnati Bar Association allegedly for the purpose of causing this matter to be heard under Rule XVIII rather than Rule XXI.

Witness Wirthlin, in the view of the Panel, did, in fact, justifiably believe that a threat had been made against him, and his family, by Respondent's counsel and is to be commended for rejecting what he viewed to be a threat and bringing the matter before this Committee. The testimony concerning the conversation between Mr. Wirthlin and Respondent's counsel supports the conclusion that language was employed by Respondent's counsel which was reprehensible.

However, Respondent enters this conversation and the conversation alleged in the first paragraph of the Supplemental Complaint only by inference.

The Board concludes, therefore, that the evidence fails to establish that Respondent directed the actions of his counsel which led to the filing of the Supplemental Complaint.

The Supplemental Complaint must, therefore, be dismissed. Since the Supplemental Complaint must be dismissed, we need not reach the question of the import of the words "further acts of misconduct."

## RECOMMENDATIONS

*As to the allegations with respect to personal, social conduct* (Paragraph 1 of the original Complaint)

The Board has found that the conduct of Respondent in relation to Miss Chasteen's presence in Respondent's apartment gave the appearance of cohabitation and, therefore, impropriety in violation of Canon 4 of the Canons of Judicial Ethics. In mitigation, the Board has had to consider the fact that Respondent was separated from his first wife, that during most of the period, in fact, Respondent and his first wife had executed a separation agreement and that Respondent subsequently married Miss Chasteen. The Board, therefore, recommends a private reprimand for this violation, taken alone.

*As to the allegations with respect to Respondent's activities while on the Common Pleas Bench* (Paragraphs 8, 10 and 11 of the original Complaint)

The Board has found that Respondent in his relationship with Harmony Loan Company and with one of his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34, and in hiring "Snowshoe" Smith has violated Canon 12 of the Canons of Judicial Ethics.

The Board can find no mitigating circumstances.

There were no compelling reasons for the maintenance of the Harmony relationships nor for the hiring of Smith. Indeed, there were compelling reasons which

would have been evident even to the inexperienced and unsophisticated to have refrained from all three relationships.

The conduct of Respondent in establishing and continuing these relationships cannot help but have brought his court into disrepute. One Panel member wrote: "I feel that the Hamilton County Domestic Relations Court, its personnel, practice and procedures fall far below acceptable standards when we consider the same from an ethical point of view or from a public relations standpoint."

For these violations considered together, the Board, therefore, recommends indefinite suspension.

*As to allegations with respect to Respondent's activities while on the Municipal Court Bench* (Paragraph 9 of the original Complaint)

The Board has found that Respondent has violated Canons 4, 13, 25, 26, 29 and 34 of the Canons of Judicial Ethics by signing orders in cases in which Harmony Loan Company, of which he was contemporaneously a director, was a party, albeit non-contested cases.

Again, there are no mitigating circumstances.

The actions of Respondent under this charge are again precisely the type that brings the legal system into disrepute.

However, the Board has had to consider that the actions herein complained of are in the past and that

there is no evidence of "harm done" to any litigants (cf. the testimony by the medical doctor under Paragraph 10 of the original Complaint).

The Board recommends Public Reprimand for the violations alleged under this charge.

## FINAL RECOMMENDATION

Viewing the charges cumulatively rather than individually, the Board concludes that Respondent over an extended period of time has displayed continuing indifference to the Canons of Judicial Ethics, "as a proper guide and reminder for judges."

It is the recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio that Respondent, George S. Heitzler, Jr., be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio (Section 6(b) of Rule V of the Rules for the Government of the Bar of Ohio.)

Howard S. Lutz
Chairman, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

William D. Radcliff
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

THE STATE OF OHIO,
City of Columbus.

THE CINCINNATI BAR ASSOCIATION,
*Relator,*

vs.

GEORGE S. HEITZLER, JR.,
*Respondent.*

1972 TERM
To wit:
Friday, September 1, 1972
No. DD 72-3

**ORDER TO SHOW CAUSE**

It appearing to the Court that the Board of Commissioners on Grievances and Discipline has filed a final report in the office of the Clerk of the Supreme Court, recommending that the Respondent, George S. Heitzler, Jr., be indefinitely suspended from the Practice of Law pursuant to Section 6(b) of Rule V of the Rules for the Government of the Bar of Ohio, it is ordered by the Court that the Respondent, George S. Heitzler, Jr., show cause, why the recommendation of the Board of Commissioners shall not be confirmed and the disciplinary order entered.

It is also ordered that objections to the findings and recommendation of the Board of Commissioners together with a brief in support of objections will be due on or before September 21, 1972.

C. William O'Neil
Chief Justice

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page .....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 1st day of September, 1972.

Thomas L. Startzman, Clerk
By Sam F. Adkins, Deputy

Cincinnati Bar Association v. Heitzler.

[Cite as Cincinnati Bar Assn. v. Heitzler (1972), 31 Ohio St. 2d .]
D.D. No. 72-3—Decided September 7, 1972.

*Per Curiam.* It is noted that on September 1, 1972, the Board of Commissioners on Grievances and Discipline of this court filed with the court findings of fact and recommendation in the matter of a complaint by the Cincinnati Bar Association against George S. Heitzler, Jr., presently serving as Judge of the Domestic Relations Division of the Court of Common Pleas of Hamilton County; it is further noted that it is the recommendation of said board that George S. Heitzler, Jr. be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio (Section 6[b] of Rule V of the Rules for the Government of the Bar of Ohio).

Therefore, without passing upon the merits of the findings and recommendation of the Board, and pend-

ing a hearing in this court on such findings and recommendation, together with such objections and answer and brief as may be filed by the Respondent, Judge Heitzler, the Chief Justice of this court is hereby authorized and directed, pursuant to Section 5, Article IV of the Constitution, to order that Judge Heitzler hear no further cases or other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County or perform any other judicial duties until this court renders its decision and judgment in the matter.

Under the rules of this court, respondent has until September 21, 1972, to file his objections to the Board's report and his brief in support thereof. Relator is given until September 28, 1972, to file a reply brief.

The case is set for oral argument on October 10, 1972.

It is so ordered.

O'Neill, C. J., Herbert, Corrigan, Stern, Leach and Brown, JJ., concur. Schneider, J., not participating.

THE STATE OF OHIO,
City of Columbus.

CINCINNATI BAR ASSOCIATION

vs.

GEORGE S. HEITZLER, JR.

1972 TERM
To wit:
September 8, 1972
No. D.D. 72-3

**ORDER**

Pursuant to the authorization and order of this Court, issued in this matter on September 7, 1972, it is hereby ordered that Judge George S. Heitzler, Jr., hear no further cases or other matter pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County nor perform any other judicial duties until this Court renders its final decision and judgment in this matter.

C. William O'Neill
Chief Justice

**NO. DD 72-3**

IN THE
SUPREME COURT OF OHIO

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THE CINCINNATI BAR ASSOCIATION,
*Relator,*

**vs.**

GEORGE S. HEITZLER, JR.,
*Respondent.*

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**MOTION FOR RECONSIDERATION AND FOR A HEARING**

Filed
Sept. 18, 1972
Supreme Court of Ohio
Thomas L. Startzman,
Clerk

GEORGE S. HEITZLER, JR.
Hamilton County Court House
Room 417
Court & Main Streets
Cincinnati, Ohio 45202
Pro Se

R. O. Klausmeyer
John J. Getgey
C. Donald Heile
26 East Sixth Street
Cincinnati, Ohio 45202
Attorneys for Relator

IN THE
SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
*Relator,*

vs. No. DD 72-3

GEORGE S. HEITZLER, JR.,
*Respondent.*

**MOTION FOR RECONSIDERATION AND FOR A HEARING**

Comes now Respondent and moves the Court for a reconsideration of its Decision in this cause entered September 7, 1972, in which the Court authorized and directed the Chief Justice " . . . to order that Judge Heitzler hear no further cases or other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County or perform any other judicial duties until this Court renders its Decision and Judgment in the matter", and, further, moves the Court for a hearing.

Respondent states that the action taken by the Court, herein sought to be reconsidered, was taken without notice to Respondent, and Respondent was given no opportunity to be present, either personally or by counsel of his choice; and Respondent further states that there is no authority, explicit or implicit, in the provisions or terms of Article IV, Section 5, of the Ohio Constitution, Ohio Revised Code Sections 2701.11 and 2701.12, or in Gov. R. V (formerly Rule XVIII of the Rules of Practice) or Gov. R. VI (formerly Rule XXI of the Rules of Practice).

Respondent asserts that the action of the Court violated the rights guaranteed him by Article I, Sections 1 and 16, of the Ohio Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

Respondent, therefore, prays for an order setting this cause for a hearing at which he be permitted to appear and be heard and be represented by counsel of his choice.

George S. Heitzler

## APPENDIX

### UNITED STATES CONSTITUTION
### AMENDMENT [V]
### [Rights of Persons]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

### AMENDMENT [XIV]
### [Rights of Citizens]

§1 [1]All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citi-

zens of the United States and of the State wherein they reside. No State shall [2]make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State [3]deprive any person of life, liberty, or property, without due process of law; nor [4]deny to any person within its jurisdiction the equal protection of the laws.

## OHIO CONSTITUTION

### ARTICLE I: BILL OF RIGHTS

§1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety. (See Const. 1802, Art VIII, § 1.)

§16 [Redress in courts.]

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3, 1912.)

Vote: "Yes," 306,764; "No," 216,634.

Original § 16 read as follows: "Sec. 16. [Of redress in courts.] All courts shall be open, and every person,

for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay. (See Const. 1802, Art VIII, § 7.)"

**OHIO REVISED CODE**

§2701.11 Rules for retirement, removal and suspension of judges; appointment of commission.

Subject to rules *implementing sections 2701.11 and 2701.12 of the Revised Code,* that shall be promulgated by the supreme court, *upon written and sworn complaint setting forth the cause or causes* and after *reasonable* notice *thereof* and • *an opportunity to be heard,* any judge may be retired for disability, • removed for cause, or suspended without pay for cause by a commission composed of • *five judges* of • *this state,* all of whom shall be appointed by the supreme court • *from among judges of the courts of record located within the territorial jurisdiction in each of any five of the appellate districts, not including that within which the respondent judge resides.*

*Such a commission shall be appointed by the supreme court upon receipt of a report of its board of commissioners on grievances and discipline that such board has received a written and sworn complaint alleging that cause exists for retirement, removal, or suspension of a judge under section 2701.12 of the Revised Code, and that upon investigation and a finding by at least two-thirds of the members of such board that there is substantial credible evidence in support of such complaint.* Any judge so retired, removed, or suspended may appeal, *on the record made before the com-*

*mission, from the commission's action to the supreme court. • The commission, the court, or a judge thereof may stay execution of an order pending disposition of an appeal. The court may affirm, reverse, or modify the order of the commission.*

Members of the commission shall be reimbursed from the state treasury for their actual and necessary expenses in connection with their service on the commission.

*The administrative assistant of the supreme court shall be the secretary of each commission appointed to consider retirement, removal, or suspension of a judge. The secretary shall certify each order of a commission which commands the retirement, removal, or suspension of a judge to the governor, the chief justice of the supreme court, and the officer required by law to draw warrants for payment of the salary of such judge.*

*Upon the request of any such commission, the attorney general shall assist in the performance of its duties.*

History: 130 ▼ Pt. 2, 142 (Eff 12-18-64); 131 ▼ 665. Eff 10-30-65.
Law review

Judicial ethics—a crisis of confidence. Hon. Robert A. Ainsworth, Jr. 42 OBar (No. 35) 1111.

§2701.12 Retirement, removal or suspension of judge.

(A) Cause for removal or suspension of a judge from office without pay under section 2701.11 of the

Revised Code exists when he has, since first elected or appointed to judicial office:

(1) Engaged in any misconduct involving moral turpitude, or a violation of such of the canons of judicial ethics adopted by the supreme court as would result in a substantial loss of public respect for the office;

(2) Been convicted of a crime involving moral turpitude; or

(3) Been disbarred or suspended for an indefinite period from the practice of law for misconduct occurring before such election or appointment.

(B) Grounds for retirement of a judge from office for disability exist when he has a permanent physical or mental disability which prevents the proper discharge of the duties of his office.

(C) Grounds for suspension without pay of a judge from office for disability exist when he has a physical or mental disability which will prevent the proper discharge of the duties of his office for an indefinite time.

History: 131 v. 665. Eff 10-30-65.

Art. IV,

§5 [Additional powers of supreme court; supervision; rule making.]

(A) (1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be

exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas temporarily to sit or hold court on any other court of common pleas or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules

shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law. (Adopted May 7, 1968.° No analogous to former § 5, repealed Oct. 9, 1883.)

THE STATE OF OHIO,
City of Columbus.

THE CINCINNATI BAR ASSOCIATION,
*Relator,*

vs.

GEORGE S. HEITZLER, JR.,
*Respondent.*

1972 Term
To wit:
Friday, October 6, 1972
No. DD 72-3

**ENTRY**

Upon consideration of the entry of appearance and motion for leave to appear and argue filed by Stanley E. Preiser, John B. Carrico and David C. McCue of the firm of Preiser & Wilson of Charleston, West Virginia, on behalf of the above named respondent, it is ordered by the court that such entry and motion be, and the same hereby is, sustained.

It is further ordered that such counsel is hereby notified that objections and brief in support of the objections on behalf of the respondent is due to be filed on or before October 20, 1972.

C. William O'Neil
Chief Justice

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
*Relator,*

v. No. DD 72-3

GEORGE S. HEITZLER, JR.,
*Respondent.*

**Motion to quash and dismiss the findings of fact and recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in the above captioned case; and motion to dismiss and recuse each and every member of the 17-man Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio as to all matters involving Respondent.**

PREISER & WILSON
STANLEY E. PREISER
JOHN B. CARRICO
DAVID C. MCCUE
Counsel for Respondent

PREISER & WILSON
1012 Kanawha Boulevard, East
P. O. Box 2506
Charleston, West Virginia 25329

Filed
Oct. 17, 1972
Supreme Court of Ohio
Thomas L. Startzman,
Clerk

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
*Relator,*

v.

GEORGE S. HEITZLER, JR.,
*Respondent.*

No. DD 72-3

**Motion to quash and dismiss the findings of fact and recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in the above captioned case; and motion to dismiss and recuse each and every member of the 17-man Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio as to all matters involving Respondent.**

Now comes the Respondent, George S. Heitzler, Jr., and shows unto this Honorable Court as follows:

1. On the 11th day of August, 1971, three members of The Cincinnati Bar Association, namely R. O. Klausmeyer, John J. Getgey and C. Donald Heile, filed with the Board of Commissioners on grievances and discipline of the Supreme Court of the State of Ohio a complaint and certificate against George S. Heitzler, Jr., Judge of the Court of Common Pleas (Division of Domestic Relations) of Cincinnati, Hamilton County, Ohio, wherein eleven (11) paragraphs recited certain alleged acts on the part of George S. Heitzler, Jr., which *allegedly constituted grounds for misconduct as a Judge*, assigning violations of certain Canons of Judicial Ethics.

2. On the 9th day of September, 1971, George S. Heitzler, Jr., filed an answer with said Board denying the charges.

3. On October 4, 1971, Relator filed a supplemental complaint wherein two (2) additional charges of alleged acts of misconduct were filed against the Respondent.

4. On October 27, 1971, Respondent filed an answer to the supplemental complaint denying those charges.

5. The complaint and answer, and the supplemental complaint and supplemental answer designated as Case No. 168, came on for hearing, commencing December 16, 1971, before a Hearing Panel of the Board of Commissioners; the hearings lasted approximately six days during which time testimony was taken and transcribed; and on January 7, 1972, the hearing before the Hearing Panel of the Board of Commissioners was concluded.

6. That during said hearings Respondent moved to dismiss the charges filed against him in the supplemental complaint, and the Hearing Panel reserved a ruling on said motion to dismiss.

7. At the conclusion of testimony and after the Hearing Panel reserved their ruling on Respondent's motion to dismiss the supplemental complaint, the Hearing Panel set forth a well-defined time schedule for the filing of all briefs on the original complaint in Case No. 168, and a well-defined time schedule for the filing of briefs on the Respondent's motion to dismiss the supplemental complaint.

Both sides filed their briefs on the motion to dismiss the supplemental complaint within the time allowed.

8. The Hearing Panel had provided, as to the time for filing briefs on the merits of Case 168, that the Relator was to have two weeks following notice of the ruling of the Hearing Panel on Respondent's motion to dismiss the supplemental complaint, and Respondent was to have two weeks after receipt of Relator's brief to file his brief.

However, the Hearing Panel on August 4, 1972, without notice to the Respondent, filed their findings of fact and recommendations with the Secretary of the Board of Commissioners and at the same time sustained Respondent's motion to dismiss the supplemental complaint. Thus Respondent, even though originally granted time by the Hearing Panel to file a brief on the merits of Case No. 168, was denied the right to file that brief because the Hearing Panel decided the case on the merits and made their recommendations and findings of fact weeks before Respondent's brief on the merits was due to be filed in accordance with the Hearing Panel's own ruling.

The Board of Commissioners filed its findings of fact and recommendations with the Secretary of the Board on September 1, 1972.

9. Respondent and his counsel did not learn of the aforesaid action of the Hearing Panel or Board until the night of September 1, 1972, when they read in the newspapers that the Board of Commissioners had filed with the Secretary of the Board its findings of fact and

recommendations. No formal notice from the Board or Secretary of the Board was received by Respondent or his attorneys until September 5, 1972.

Immediately thereafter one of the attorneys of record for Respondent telephoned the Secretary of the Board of Commissioners and requested on behalf of Respondent a copy of the Hearing Panel's findings and recommendations and was told the same was not available to Respondent.

After counsel for Respondent was orally advised by the Secretary of the Board that the Hearing Panel's findings and recommendations were not available to him, then on September 5, 1972, he wrote to the Secretary of the Board again requesting that report, which request was apparently ignored.

Thereafter Judge Heitzler personally wrote to the Secretary of the Board requesting a copy of the Panel's findings and recommendations. Finally on September 20, approximately 45 days after being filed with the Secretary of the Board, and 19 days after the Board of Commissioners had filed its findings and recommendations, a copy of the Hearing Panel's findings of fact and recommendations was sent to Respondent.

Therefor, the Hearing Panel in violation of its own rulings denied to Respondent effective assistance of counsel and the right to file a brief on the merits of the case, and the Board of Commissioners made their findings of fact and recommendations without giving Respondent a right to be heard and without giving Respondent a right to file a brief on the merits.

To compound the complete denial of any semblance of due process and the total and complete denial to Respondent of his basic constitutional rights and right to counsel, R. O. Klausmeyer acting on behalf of the Relator on August 9, 1972, filed a brief on behalf of Relator with the Hearing Panel, and in his covering letter recited that he knew he was filing that brief before it was due. In the very same letter Mr. Klausmeyer recited and acknowledged that by filing the Relator's brief early he did not intend to impose upon Respondent any obligation to file his brief at a time earlier than that previously assigned.

As a consequence, the Board of Commissioners had before it in their consideration of the merits of this case, only the brief of Relator and denied Respondent any right to argue, discuss or brief the merits of the case.

In further disregard of the rights of Respondent, on the same day the Hearing Panel filed with the Secretary of the Board of Commissioners their findings of fact and recommendations, the sum total of which recommended that Respondent be indefinitely suspended from the practice of law, to-wit on August 4, 1972, the Board of Commissioners met from only 2:00 p.m. to 4:30 p.m. on that day. At that meeting only fifteen (15) members of the Board of Commissioners attended. Two were absent and Mr. Gordon Scherer although present allegedly did not discuss the proceedings in this case, nor vote on the same. Messers Snyder and Green were absent.

10. Three (3) members of that Board of Commissioners who acted in Case 168 had sat as the Hearing

Panel in Case 172 which involved other charges against Respondent. They were Norton Webster, John C. Sheppard and Howard Lutz, and Howard Lutz signed the findings of fact and recommendations of the Board of Commissioners in Case 168.

In addition, Gordon Scherer, even though allegedly not participating in the discussion or voting on the proceedings in Case 168 was present during those discussions and further, as hereinafter alleged, the said Gordon Scherer had been active in grand jury proceedings directed against Respondent, and had testified as a witness in Relators Case 168 against Respondent.

Even though the Board of Commissioners at their 2½ hour meeting on August 4, 1972, stated that the recommendations of the Hearing Panel in Case 168 was "unanimously" adopted by the Board, the facts are that it was only unanimously adopted by fourteen (14) members of a seventeen (17) man board.

The transcript of testimony in Case 168 before the Hearing Panel and presented to the Board of Commissioners to be considered during their 2½ hour meeting was 1408 pages, and it is respectfully submitted that there was only one copy available and that no member of the Board of Commissioners could have read that transcript of testimony (much less all of them) in the 2½ hour meeting. Additionally, during the same 2½ hour meeting, matters other than Case 168 were considered.

Respondent therefore further alleges that there was a total abrogation of the duties and responsibilities of the Board of Commissioners and an unconstitutional

and unlawful delegation of their authority to the Hearing Panel, especially when the findings of fact and recommendations of the Board of Commissioners are almost word for word the same as the findings of fact and recommendations of the Hearing Panel.

11. On September 1, 1972, the Supreme Court of Ohio filed an order directing Respondent to show cause why the recommendations of the Board of Commissioners should not be confirmed and disciplinary order entered.

12. On September 7, 1972, the Supreme Court of Ohio in a per curiam opinion without passing on the merits of the findings and recommendations of the Board of Commissioners or Hearing Panel found that Respondent should exercise no further judicial duties until the Supreme Court of Ohio renders its decision and judgment in the matter.

13. On September 8, 1972, by order signed by Chief Justice C. William O'Neil, George S. Heitzler, Jr., was directed not to hear any further cases or any other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County, and was also directed not to perform any other judicial duties until the Supreme Court of Ohio renders its final decision.

14. Also on September 8, 1972, by order of the Supreme Court of Ohio a retired Judge was assigned to fill the vacancy of the Respondent Judge Heitzler pending further action by the Supreme Court of Ohio.

15. On September 18, 1972, George S. Heitzler, Jr., *pro se*, filed with this Honorable Court a motion for

reconsideration and for a hearing wherein Respondent set forth various grounds which he believed entitled him to a reconsideration of the order previously entered, which order removed George S. Heitzler, Jr., from acting in any judicial capacity. This motion was denied.

16. The presence of Mr. Gordon H. Scherer during the deliberations of the Board of Commissioners on Grievances and Discipline constituted an undue and coercive influence upon the deliberations of the Board.

Gordon H. Scherer was present during the deliberations conducted with respect to this case. The minutes of the Board conclusively demonstrate that Mr. Scherer was present although "[he] took no part in the discussion or voting in Case No. 168." (See the attached copy of the extracted portion of the minutes of the Board which extract was furnished to counsel by Respondent, Respondent's Exhibit No. 1 which is hereby adopted by reference as though fully set out herein).

The mere physical presence of Mr. Scherer was prejudical. Although he did not vote and did not participate in the discussions, this does not vitiate the fact that Gordon H. Scherer was also the same person who had previously "played a key role in launching the scheduled Grand Jury investigation of the Hamilton County Domestic Relations Court", seeking to have Respondent, George S. Heitzler, Jr., indicted. (See newspaper article attached hereto and made a part hereof the same as if fully set out herein as Respondent's Exhibit No. 2).

The grand jury which considered the evidence presented in part by Mr. Gordon H. Scherer did *NOT* return an indictment against Respondent.

Reference to the oral testimony of Gordon H. Scherer conclusively demonstrates the prejudice he harbored toward Respondent. Gordon H. Scherer was the Chairman of the Hamilton County Republican Central Committee and was a member of the Executive Committee of the Ohio State Republican Organization. He had recommended that Judge Heitzler be endorsed as the Republican candidate for the Domestic Relations Court. Relations apparently soured between Scherer and Judge Heitzler sometime during 1970.

Next came the attempt to indict Judge Heitzler. Gordon H. Scherer made it unequivocally clear when he stated on recross examination during the Panel hearings that he was "very critical of *** the Prosecutor's handling of the case". Furthermore, Gordon H. Scherer quoted with obvious displeasure portions of the record from the public portion of the report of the grand jury.

Finally, of all seventeen Board members, Gordon H. Scherer was the only member from Hamilton County. As a result it was probable that his testimony was given great weight by the Panel and in turn by the Board on which he sat. There was no need for him to enter into further discussions, nor to vote. The bias of Gordon H. Scherer does not need further amplification. Permitting a witness for the Relator to remain sitting on the Board during their deliberations is tantamount to permitting the prosecuting attorney or at least the chief prosecuting witness to remain with the

petit jury during the deliberations in a criminal case. Where a person is a witness in an investigatory proceeding relating to serious charges of alleged misconduct on the part of a member of the judiciary, and when this witness is also a member of the Board charged with making an impartial finding of fact relating to such alleged charges, and where such witness —member has previously exhibited the existence of substantial bias and there is present the inference of outright prejudice, permitting such member—witness to remain present during the deliberations leaves the impartiality of the Board's decision open to grave question. There is no doubt that because of the presence of Gordon Scherer, the deliberation of the Board cannot be considered impartial.

17. The Board of Commissioners was prejudicially and unconstitutionally constituted and their action was and is unlawful, and unconstitutional because three members of that Board who sat and made findings and recommendations in Case No. 168, had heard evidence in Case No. 172, a pending companion case involving this same Respondent, but based upon different charges. This constitutes a shocking disregard of Respondent's right to due process.

Case No. 168 was heard in December of 1971. Case No. 172 was heard in May of 1972. Determination by the Board of Case No. 168 was finalized and filed in September, 1972. The fifteen (15) man Board of Commissioners on Grievances and Discipline which heard and passed on Case No. 168 included Roger H. Smith, Erle Bridgewater and John O. Henry, who constituted the Hearing Panel that had originally heard Case No.

168. The Panel that heard Case No. 172 before Case No. 168 was finalized included; Norman Webster, Howard Lutz and John C. Sheppard. These men also sat on the Board that filed the final report in 168 and Mr. Lutz signed as Chairman of the Board the final recommendation in 168. It is obvious that three members have played a dual role and have been privy to information that undoubtedly improperly influenced their judgment and that the findings and recommendations of the Board are tainted and should be quashed and dismissed and that the entire Board should be dismissed and recused from further matters involving this Respondent.

18. The charges against Respondent in Case No. 172 grew out of and were a direct result of the Board's investigation into Case No. 168. Even though Respondent was formally charged in 172 he had already testified in Case No. 168 as to the charges brought against him later in May in Case No. 172.

19. This proceeding is quasi-criminal in nature.

20. The Hearing Panel and the Board of Commissioners have failed to follow the Rules provided by this Honorable Court in that under Rule V proviso is made that a majority of the Board of Commissioners shall constitute a quorum but no such provision is contained in Rule VI. In addition the obligations implicitly imposed and inherent within the Rules of this Court require the Board of Commissioners to independently examine the evidence against the person charged, which in this case they could not have done in their August 4, 1972, 2½ hour meeting.

21. The Board of Commissioners findings and recommendations as to violation of Canon 25 are violative of due process standards, in that Respondent's conduct conformed to the basic judicial standard existing in Cincinnati, Ohio. Judges in Cincinnati, Ohio, can and do sit on Boards of Directors of lending institutions and corporations and that factor, in itself, cannot establish a claim of use of influence to promote business as contended by the Board in their findings.

The Board stated in their findings on page 10:

> ". . . That Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; . . ."

Respondent served as a director of a Kentucky corporation known as Harmony Loan Company, authorized to do business only in Kentucky, not in Ohio where Respondent served as a Judge. During the period of 1964 to August, 1971, Respondent did not participate in management and was not active in the business, nor did he attend directors' meetings during this period. He invested a total of $30,000.00 composed of his son's and his wife's money in this corporation in the form of non-voting stock and five and ten year debentures. There is no evidence that Respondent at any time used the power of his office or name to promote the business. The Board has stated that "Respondent permitted his name to be used in a prospectus used in connection with the sale of debentures . . . and also permitted his name and biography . . ."

An examination of the prospectus in question reveals that the address of Respondent is incorrect, and the

biographical information contained therein is also incorrect. This erroneous information in the prospectus proves the Respondent did not have knowledge of the brochure or prospectus which had been circulated without his knowledge.

There is absolutely no evidence that Respondent knew of the prospectus involved and no evidence that the Respondent permitted or used the power of his office or the influence of his name to promote the business interests of others. The contrary is shown in affidavits of Respondent Heitzler and Frank Spampinato, Vice President of said Harmony Loan Company, (which affidavits are attached hereto and made a part hereof the same as if fully set out herein, and marked for identification as Respondent's Exhibits No. 3 and 4). The facts are conclusively established that Respondent did not know of the existence of the brochure or prospectus and did not know or permit the use of the power of his office or the influence of his name to promote the business interests of Harmony Loan Company. One of the findings by the Board of misconduct on the part of the Respondent upon which they base their recommendation of indefinite suspension relied upon a finding that cannot constitutionally be made and was made without due process of law and without any evidence to substantiate the same.

Canon 25 of the Canons of Judicial Ethics does not specifically state that a judge cannot be a member of a Board of Directors. It only prohibits allowing one to permit the power of his office or name to be used for influence. This did not happen in this case.

A close scrutiny of the judicial standards of the community must be made before any discredit is attempted to be put on Respondent for alleged misconduct. An affidavit of Mr. Wilbert F. Stagenhorst shows the results of an investigation establishing the judicial standards in this regard in Ohio, in that other judges in Ohio are on various Boards of Directors. That affidavit is attached hereto and made a part hereof the same as if fully set out herein and marked as Respondent's Exhibit No. 5. That affidavit graphically reveals the standard in the community regarding the membership of judges on boards of financial institutions and corporations which standard is that it is common and proper for judges to be members of these boards. The names of these judges and the Boards of Directors of the institutions upon which they are members are duly noted in the affidavit.

It is to be noted further that this affidavit covers only financial institutions located in Ohio and does not cover business or charitable enterprises which, of course, come under the same Canon.

22. The standard of hiring personnel working for Hamilton County and the policy of the State of Ohio and the policy of the American Bar Association is to rehabilitate those with a criminal record by hiring them. Respondent has been charged and found guilty of employing one with a criminal record and because of that employment the Board found that Respondent had violated the Judicial Canons.

Rufus Smith had been hired in a nonsensitive position, the purpose of which was to call cases and escort litigants to the proper referee in the Domestic Rela-

tions Court of Hamilton County. Mr. Smith was convicted of a felony January 26, 1955, served his time and paid his debt to society. After that one felony he has had no further felony convictions. During Rufus Smith's service with Hamilton County Courts he suffered no arrests or infractions of the law. It appears that a man whose only felony conviction was in 1955 should be given every opportunity to rehabilitate himself.

Wilbert F. Stagenhorst personally conducted an investigation regarding the employment standards of hiring employees of Hamilton County who have a prior criminal record. His affidavit showing the results of his investigation is attached hereto and made a part hereof the same as if fully set out herein and marked as Respondent's Exhibit No. 6. This affidavit lists people working for Hamilton County who have prior records. It should be noted that a guard for the County Court, who is still working, has a record which includes charges of serious crimes of violence. The Board did not take into consideration the standard in this nation or the State of Ohio or Hamilton County, regarding the hiring of people with a prior record, and in finding that Respondent had violated the Canons of Judicial Ethics in this regard, they failed to follow minimum standards. Neither the existing standard nor the Canons of Judicial Ethics were violated by Respondent, and hence Respondent has been denied due process of law, and his constitutional rights were violated by a finding of misconduct in pursuing conduct which cannot be constitutionally prohibited or proscribed in this manner but to the contrary should be encouraged.

23. The Hearing Panel and the Board of Commissioners in their findings and recommendations found

that Respondent was guilty of certain breaches of the Canons of Judicial Ethics, to-wit:

a. Canon 4; "that the conduct of Respondent in relation to Miss Chasteen's (Judge Heitzler's present wife) presence in Respondent's apartment gave the appearance of cohabitation and therefore impropriety in violation of Canon 4 of the Judicial Ethics."

For this violation, taken alone, the Board recommended a private reprimand.

b. Canons 13, 25, 12 and 34; "That Respondent in his relationship with Harmony Loan Company and with one of his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34 and in hiring 'Snowshoe Smith' has violated Canon 12 of the Canons of Judicial Ethics."

For the above violations "considered together" the Board recommended an indefinite suspension.

c. Canons, 4, 13, 25, 26, 29 and 34; That Respondent violated the aforementioned Canons of Judicial Ethics "by signing orders in cases in which Harmony Loan Company, of which he was contemporaneously a director, was a party, albeit in non-contested cases," while Respondent was on the Municipal Court bench.

Because there was no evidence of harm done to any litigant for the above violations the Board recommended a public reprimand.

The Board further recommended that as a result Respondent should be indefinitely suspended from the practice of law.

The record in this case, the transcript of testimony, and the additional evidence submitted with this motion to quash and dismiss establishes that the findings of fact by the Hearing Panel and Board of Commissioners cannot be substantiated, and their findings that Respondent has violated certain Judicial Canons of Ethics are based upon conduct exercised by the Respondent, if it was exercised at all, that cannot be constitutionally prohibited and for which neither a judge nor lawyer can be punished within the purview of his constitutional rights as an individual citizen, as a lawyer and as a judge.

Consequently, for this Honorable Court to accept the findings and recommendations of the Board or to consider them would violate the constitutional guarantees of Respondent, and therefore said findings of fact and recommendations should be quashed and dismissed without further consideration by this Honorable Court. To do otherwise would be tantamount to denying Respondent his constitutional right of due process and his other constitutional rights guaranteed to him by virtue of the First, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution.

To further illustrate the biased and unjustified findings of fact and recommendations of the Hearing Panel and Board of Commissioners and to demonstrate to this Honorable Court that the findings of fact and recommendations of the Board of Commissioners are not based upon the evidence and are based upon inferences and conclusions contrary to the true facts, Respondent attaches to this motion as exhibits the

affidavits of Carol Chasteen Heitzler and Geoffrey Heitzler, that the Respondent did not live with Carol Chasteen nor did he live under such circumstances as to leave an impression of impropriety, which affidavits are attached hereto and expressly made a part hereof the same as if fully set out herein and are marked for identification as Respondent's Exhibits No. 7 and 8.

24. When this Honorable Court entered its order of September 8, 1972, prohibiting the Respondent from performing further judicial functions until its final decision in this matter, it violated the Respondent's constitutional rights in that he was not granted the due process of law required by the Constitution of the United States.

Respondent was denied a hearing on the question of his removal, temporary or otherwise, and he was denied his statutory rights, assured him by the laws of the State of Ohio, Ohio Revised Code §2701.11 and §2701.12 and he was denied the due process required by the procedures set forth in the Rules of this Court for removal of Judges, Rule VI.

Article IV, Section 5 of the Ohio Constitution as applied to Judge Heitzler in this case as a basis for suspension of his judicial duties without hearing or other proceedings, as was done herein, results in an unconstitutional application of the Ohio Constitution as applied to this Respondent in violation of the United States Constitution and its Amendments, or if said Article IV, Section 5 of the Ohio Constitution allows such a procedure as was followed here for temporary

suspension of the performance of judicial duties by a judge, without a hearing as was done in this case, then said Ohio Constitution is itself unconstitutional as being contrary to and violative of constitutional rights of due process required by the United States Constitution and its Amendments.

The action taken by this Honorable Court in prohibiting the Respondent from performing further judicial duties until the Ohio Supreme Court rendered its decision and judgment in this matter was taken without notice to the Respondent, without the right of Respondent to counsel, without the right of Respondent to a hearing, without the right of Respondent to be faced by his accusers, and was also taken in violation of the rights granted to him by the aforementioned statutes of the State of Ohio and the aforementioned Rules of disciplinary procedures adopted by this Honorable Court.

25. Respondent says that as a result of the foregoing he has been denied his right of due process of law and all of his constitutional guarantees in these proceedings and therefore these proceedings are and should be void. Respondent further says that the entry of the order of September 8, 1972 by this Honorable Court prohibiting him from further judicial action, being entered without notice or hearing, is not only a denial of *his* right to due process and *his* constitutional rights but is an infringement on the right of people of the State of Ohio to choose their judicial officers and have them continue to serve in a judicial capacity until and unless they are removed in accordance with the statutory laws of the State of Ohio and

the Rules of Procedure in Grievance matters adopted by this Honorable Court.

WHEREFORE, Respondent prays as follows:

1. That the order of September 8, 1972, of this Honorable Court prohibiting Respondent from performing further judicial duties until this Court renders its decision and judgment in the matter be set aside and held for naught in that that order must have been based, at least in part, upon the findings of fact and recommendations of either the Hearing Panel or the Board of Commissioners or both, and the transcript of testimony taken in this proceeding, all of which findings of facts and recommendations are biased, prejudiced and exist only as a result of the denial to this Respondent of due process of law and his other constitutional rights guaranteed to him as a citizen, as an individual, as a lawyer and as a judge.

2. That the findings of fact and recommendations of the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio be quashed and dismissed.

3. That the findings of fact and recommendations of the Hearing Panel of the Board of Commissioners be quashed and dismissed.

4. That the proceedings against Respondent be dismissed and that the Relator and Board of Commissioners be prohibited from pursuing the matters against Respondent which are set forth in Case 168 or Case 172 for the reasons set forth herein, and for

the reason that the Respondent has been denied his substantive constitutional rights, as well as his procedural constitutional rights to the effect that further proceedings in and of themselves would be so tainted with fruits of the poisonous tree that such further proceedings could not be fair or impartial or in compliance with constitutional guarantees.

5. In the alternative and if the relief prayed for above is refused, Respondent prays that this Honorable Court dismiss and recuse the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio from any further proceedings in Case 168 or Case 172 against this Respondent, and that the findings and recommendations of said Board of Commissioners and of the Hearing Panel be quashed and dismissed, and that this matter be remanded to a new unbiased, unprejudiced Board of Commissioners and Hearing Panel for hearings de novo with instructions from this Honorable Court to said Board of Commissioners and Hearing Panel that Respondent be granted all of his constitutional rights and his right to due process of law, and that the actions and proceedings of said Board of Commissioners and Hearing Panel be in accordance with the Rules promulgated by this Honorable Court in disciplinary proceedings and in accordance with the statutes of the State of Ohio, and that Respondent be informed under which rule the proceedings are being had, i.e., Rule V or Rule VI, and that the order of this Honorable Court of September 8, 1972, prohibiting the Respondent from performing further judicial functions be rescinded pending new findings of fact and recommendations by a newly constituted unbiased, unprejudiced Board of Commissioners.

6. And for such other relief to which the Respondent may be entitled and which this Honorable Court believes should be granted.

George S. Heitzler
Respondent
By Counsel

Stanley E. Preiser
John B. Carrico
David C. McCue
Preiser & Wilson
1012 Kanawha Boulevard, East
P. O. Box 2506
Charleston, West Virginia 25329
Counsel for Respondent

**RESPONDENT'S EXHIBIT NO. 1**

**MINUTES**

BOARD OF COMMISSIONERS ON GRIEVANCES
AND DISCIPLINE OF
THE SUPREME COURT OF OHIO
HELD AT COLUMBUS, OHIO
August 4, 1972

The meeting was called to order at 2:00 o'clock p.m. by Chairman Lutz.

Members present: Messrs. Scherer, Henry, Hoeffel, Smith, Moulton, Houston, Webster, Young, Coultrap, Walker, Richards, Sheppard, Faulkner, Bridgewater, and Chairman Lutz.

Members absent: Messrs. Snyder and Green.

Mr. Smith made the report for the hearing panel in Case No. 168, Cincinnati Bar Association, Relator, v. George S. Heitzler, Jr., Respondent. Mr. Smith moved, seconded by Mr. Bridgewater, that the Board find that the Respondent is guilty of misconduct as defined in Section 5(a) of Rule XVIII (Section 5(a) of Gov. R. V) and that his conduct violated Canons 1, 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics and his conduct also violated Canon 12 of the Canons of Legal Ethics. The vote on the findings was unanimous.

Mr. Smith moved, seconded by Mr. Walker, that it be recommended that the Respondent, for his misconduct be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII (Section 6(b) of Gov. R. V). The vote on the recommendation of the Board was unanimous.

Mr. Scherer took no part in the discussion or voting in Case No. 168.

* * *

WHEREUPON, there being no further business, the Board of Commissioners on Grievances and Discipline did, at 4:30 o'clock p.m., adjourn to meet at 2:00 o'clock p.m. on October 27, 1972 at Columbus, Ohio.

William D. Radcliff
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

August 7, 1972

**RESPONDENT'S EXHIBIT NO. 2**

[News article will not engrave—Exhibit omitted]

**RESPONDENT'S EXHIBIT NO. 3**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

George S. Heitzler, being first duly cautioned and sworn, deposes and says that at no time did he authorize or consent to the use of his name, title or picture in conjunction with any prospectus or literature of any kind connected with the Harmony Loan Corporation of Kentucky. Deponent further says that he had no knowledge that any such literature or prospectus were in existence or being used, published or circulated.

George S. Heitzler

Sworn to and subscribed before me this 12th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires, Nov. 29, 1974.

**RESPONDENT'S EXHIBIT NO. 4**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Frank Spampinato, being first duly cautioned and sworn, deposes and says that from 1961 to 1972 he was Vice President of Harmony Loan Corporation of Kentucky. That part of this time Judge George S. Heitzler was a member of the Board of Directors of said corporation. That from time to time certain literature including, but not limited to, financial statements and prospectus, were required by Kentucky law to be published. Deponent further states that part of the information required to be published were names of the Board of Directors. Deponent further states that these names, including the name of Judge Heitzler, were published without the consent or knowledge of Judge Heitzler. Deponent further states that the sole reason for the publication of said names was to comply with the laws of the Commonwealth of Kentucky.

Frank Spampinato

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

**RESPONDENT'S EXHIBIT NO. 5**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Wilbert F. Stagenhorst, being first duly cautioned and sworn, deposes and says that at the request of the attorneys for the Honorable George S. Heitzler, he personally conducted an investigation of the various Building and Loans and Savings Associations in Hamilton County to ascertain the number of judges of the courts of Hamilton County who were or are associated with these corporations as officers or directors. As a result of his investigation the following judges were found to be associated with the corporations listed together with their title:

Judge Wm. S. Morrissey ..... Director
Molitor Building & Loan

Judge Melvin G. Rueger ..... President
Delhi Savings & Loan

Judge Robt. V. Wood ..... Vice President
Palmer Products

Judge Otis R. Hess ..... Director
Highland Federal Savings & Loan

Judge Chase M. Davies ..... Director
Pleasant Ridge Savings & Loan

Judge Joseph Luebbers ..... Director
West Norwood Building & Loan

Judge Carl W. Rich.....Vice Pres. & Director
Home State Savings & Loan

Judge Carl W. Rich.....Director
Kennedy Savings & Loan

Judge Carl W. Rich.....Vice Pres. & Director
Central Hyde Park Savings & Loan

Judge Watson Hover.....Director
Ringold Savings & Loan

Also, see attached exhibits which were collected personally by deponent.

Wilbert F. Stagenhorst

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

[Exhibit omitted—would not engrave legibly]

**RESPONDENT'S EXHIBIT NO. 6**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Wilbert F. Stagenhorst, being first duly cautioned and sworn, deposes and says that at the request of the attorneys for the Honorable George S. Heitzler, he per-

sonally conducted an investigation of the present employees of Hamilton County with previous criminal records. As a result of his investigation the following list of personnel, together with their titles, were found to be employed by the County of Hamilton at the Hamilton County Court House.

| Name | Title |
|---|---|
| John Blankenship | Guard |
| Isaac Hodge | Watchman |
| Martin Joseph Johnson | Mechanic Helper, Sheriff's Dept. |
| Thomas Jones | Supervisor, Recorder's Dept. |

Attached are the individual records for these men.

Wilbert F. Stagenhorst

Sworn to and subscribed before me this 10th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

9-6-72

John Blankenship, male black, 66 employed as a guard Hamilton County Court House is 1969. Presently still employed.

Attached, police record, homicide report and photo.

W. Stagenhorst

[Police records will not engrave—Exhibit omitted]

Martin Joseph Johnson, date of birth 8-23-27, Mechanic helper Sheriff Department. Presently employed.

[Police records will not engrave—Exhibit omitted]

Isaac Hodge, male, black, 47 (DOB 5-22-25).

Employed Hamilton County Court House as a watchman May 9, 1971—still employed.

[Police records will not engrave—Exhibit omitted]

Thomas Jones, date of birth, 10-29-12, Supervisor Recorder Department under Judson Hoy.

Subject failed to file income taxes from 1951 to 1963, Internal Revenue filed criminal charges for the years 1959-60-61. Subject convicted March 10, 1966 and was placed on 2 years probation.

Subject actively employed in the records office.

[Police records will not engrave—Exhibit omitted]

**RESPONDENT'S EXHIBIT NO. 7**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Carol Sue Heitzler, being first duly cautioned and sworn, deposes and states that she resided with her father at Sylved Lane until her marriage to George Heitzler. Although she frequently visited the Erlene Drive apartment and assisted Geoffrey Heitzler with his medical problems, she did not move in until after her marriage to George Heitzler. Deponent further states that she was under subpoena by the Cincinnati Bar Association and present for all the hearings in Dayton, Ohio starting 12-16-71.

Carol Sue Heitzler

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public,
Hamilton County, Ohio
My Commission Expires Nov. 29, 1974.

**RESPONDENT'S EXHIBIT NO. 8**

**AFFIDAVIT**

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Geoffrey Heitzler, being first duly cautioned and sworn, deposes and states that he and his father alone resided at 2692 Erlene Drive, apt. 721, until his father married Carol Sue Chasteen. Deponent further states that although Miss Chasteen was frequently at the apartment, she did not move in until after her marriage to his father.

Geoffrey Heitzler

Sworn to and subscribed before me this 12th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

**CERTIFICATE OF SERVICE**

The undersigned John B. Carrico, one of counsel for Respondent, hereby certifies that service has been made upon opposing counsel in this case by depositing a copy of the attached Motion to Quash and Dismiss and Motion to Dismiss and Recuse, along with the attached Exhibits in the United States mail, properly addressed to counsel for Relator and the proper United States postage attached, this 16th day of October, 1972.

John B. Carrico
One of Counsel for Respondent

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,

*Relator,*

v. No. DD 72-3

GEORGE S. HEITZLER, JR.,

*Respondent.*

**Respondent's Objections to the Findings of Fact and Recommendations of the Board of Commissioners and to the Entry of a Disciplinary Order and to the Confirmation of the Report on which the order to show cause was issued, and objections to the entry of the order removing Respondent from acting further in his judicial capacity.**

PREISER & WILSON
STANLEY E. PREISER
JOHN B. CARRICO
DAVID C. MCCUE
Counsel for Respondent

Preiser & Wilson
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P. O. Box 2506
Charleston, West Virginia 25329

Filed
Oct. 20, 1972
Supreme Court of Ohio
Thomas L. Startzman,
Clerk

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,

*Relator,*

v. No. DD 72-3

GEORGE S. HEITZLER, JR.,

*Respondent.*

**Respondent's Objections to the Findings of Fact and Recommendations of the Board of Commissioners and to the Entry of a Disciplinary Order and to the Confirmation of the Report on which the Order to Show Cause was Issued, and objections to the entry of the Order removing Respondent from acting further in his judicial capacity.**

A. Respondent objects to the following Findings of Fact and Recommendations of the Board of Commissioners: (References are to the page and paragraphs of the Board of Commissioners' Findings of Fact and Recommendations)

(1) Page 5, Paragraph 5, Respondent objects to the following:

"The Board finds from the evidence submitted that Miss Chasteen was present in Respondent's apartment upon so many occasions, at such times and in such dress as to create the public appearance of residing therein, at least during a part of the period from latter 1969 until September, 1970."

(2) Page 7, Paragraph 4:

"In summary, with respect to the allegations and charges of the original Complaint concerning Respondent's personal, social conduct, the Board finds that the evidence sustains only the allegations set forth in Paragraph 1; that the evidence presented under Paragraph 1 does prove a violation as charged in Canon 4 of the Canons of Judicial Ethics in that Respondent's personal behavior in his everyday life, while a Judge, gave the appearance of impropriety and was not beyond reproach;"

(3) Page 8, Paragraph 2:

"Although not active in the business of Harmony, Respondent decidedly helped, by serving as a director, to promote the business interests of Harmony."

(4) Page 8, Paragraph 3:

"Implicit in such testimony is the conclusion that the presence of Respondent as a director coupled with the prestige of Respondent as a Judge enhanced the status of Harmony and promoted Harmony's business."

(5) Page 8, Paragraph 4:

"Further, Respondent permitted his name to be used in a Prospectus (Exhibit 4) used in connection with the sale of debentures of Harmony and had also permitted his picture, name and biography to be used in Harmony promotional literature (Exhibit 7)."

(6) Page 8, Paragraph 5:

"Since Respondent was not an active, managing director, the Board can only conclude, as

a matter of fact, that Respondent knowingly remained on the Harmony Board for the purpose of allowing his prestige to bolster Harmony's stature and thereby increase its business."

(7) Page 8, Paragraph 6:

"... the Board concludes that Respondent used the power of his office and the influence of his name to promote the business of Harmony."

(8) Page 8, Paragraph 9, continued to top of Page 9:

"The Board concludes, however, from all of the evidence, that Respondent was not indifferent to private, partisan influences and that his conduct justified the impression that there was one, who practiced before Respondent, who could unduly enjoy Respondent's favor."

(9) Page 10, Paragraph 2:

"Summarizing, therefore, the Board's findings with respect to activities of Respondent while on the Common Pleas Bench, the Board finds: That Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; that Respondent violated Canon 13 by suffering his conduct to justify the impression that his favor was unduly enjoyed by another; that Respondent violated Canon 34 in that he was not indifferent to partisan influences; and, that Respondent violated Canon 12 by employing one whom he knew, or should have known, was not possessed of the required character and fitness."

(10) Page 10, Paragraph 7, continued to top of Page 11:

"The signing of orders imports the full weight of the judicial office to the order. It is a judicial, not administrative, function. To the public, the distinction between contested and non-contested matters is a distinction without a difference; to the public, Respondent acted in violation of the spirit of the Canons of Judicial Ethics and with indifference to the ethical standards which 'the people have a right to expect from' a Judge."

(11) Page 11, Paragraph 1:

". . . the Board further concludes that the fact that the acts did not occur within Respondent's current term does not bar this charge. Respondent is not herein charged as a Judge under Rule XXI but rather as an attorney under Rule XVIII. Any limitation must, therefore, be that applied to attorneys for violations of the Canons of Ethics. Clearly the charge is timely as applied to an attorney and no claim is made by Respondent that is not. The fact that the violations complained of happen to be violations of the Canons of Judicial Ethics—the observance of which is also imposed on attorneys when serving as Judges—does not shorten the limitation time or otherwise moderate or alter the defenses afforded attorneys under Rule XVIII."

(12) Page 11, Paragraph 2:

"The Board, therefore, finds that Respondent signed numerous Judicial Orders, during his term as Municipal Judge, which involved cases in which a company, of which he was contemporaneously a director, was a party; that such

acts constituted violations of Canons 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics; and, that the consideration of such acts is properly before this Board."

(13) Recommendations, Page 12, Paragraph 1, First Sentence:

"The Board has found that the conduct of Respondent in relation to Miss Chasteen's presence in Respondent's apartment gave the appearance of cohabitation and, therefore, impropriety in violation of Canon 4 of the Canons of Judicial Ethics."

(14) Recommendations, Page 12, Paragraph 1, Last Sentence:

"The Board, therefore, recommends a private reprimand for this violation, taken alone."

(15) Recommendations, Page 12, Paragraph 2:

"The Board has found that Respondent in his relationship with Harmony Loan Company and with one of his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34, and in hiring 'Snowshoe' Smith has violated Canon 12 of the Canons of Judicial Ethics."

(16) Recommendations, Page 13, Paragraph 1:

"The Board can find no mitigating circumstances. There were no compelling reasons for the maintenance of the Harmony relationships nor for the hiring of Smith. Indeed, there were compelling reasons which would have been evident even to the inexperienced and unsophisticated to have refrained from all three relationships."

(17) Recommendations, Page 13, Paragraph 2:

"The conduct of Respondent in establishing and continuing these relationships cannot help but have brought his court into disrepute."

(18) Recommendations, Page 13, Paragraph 3:

"For these violations considered together, the Board, therefore, recommends indefinite suspension."

(19) Recommendations, Page 13, Paragraphs 4, 5, 6, 7 and 8:

"The Board has found that Respondent has violated Canons 4, 13, 25, 26, 29 and 34 of the Canons of Judicial Ethics by signing orders in cases in which Harmony Loan Company, of which he was contemporaneously a director, was a party, albeit non-contested cases.

Again, there are no mitigating circumstances. The actions of Respondent under this charge are again precisely the type that brings the legal system into disrepute.

However, the Board has had to consider that the actions herein complained of are in the past and that there is no evidence of "harm done" to any litigants (cf. the testimony by the medical doctor under Paragraph 10 of the original Complaint). The Board recommends Public Reprimand for the violations alleged under this charge."

(20) Final Recommendation, Page 13, Last Paragraph:

"Viewing the charges cumulatively rather than individually, the Board concludes that Respondent over an extended period of time

has displayed continuing indifference to the Canons of Judicial Ethics, 'as a proper guide and reminder for judges' ".

(21) Final Recommendation, Page 14:

"It is the recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio that Respondent, George S. Heitzler, Jr., be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio (Section 6(b) of Rule V of the Rules for the Government of the Bar of Ohio.)"

B. Respondent objects to the entry of any Disciplinary Order.

C. Respondent objects to the confirmation of the report on which the Order to Show Cause was issued.

D. Respondent objects to the entry of the Order removing Respondent from acting further in his judicial capacity.

E. Respondent objects to the entire proceedings had against him in Case No. 168 and to all of the Findings of Fact and Recommendations of the Board of Commissioners for the reasons and upon the grounds set forth in the Motion to Quash and Dismiss, previously filed herein on October 17, 1972, and assigns in support of this objection the reasons and grounds set forth in the aforementioned Motion to Quash and Dismiss and the Memorandum filed in support thereof and the Brief filed in support of these objections and, Respondent incorporates the aforementioned Motion to Quash and Dismiss here-

in to the full extent as if the same were fully set out herein.

F. Respondent assigns the reasons and grounds set forth in his Brief filed in support of these objections as the reasons and grounds for the above set out objections and hereby incorporates all of the reasons and grounds set out in said Brief as part of these objections the same as if fully set out herein.

G. Respondent assigns as additional grounds in support of the objections hereinabove set out and incorporates as part of the record of this case the following affidavits:

(1) Affidavit of Rufus Lee Smith in effect denying the statements made by Howard R. Wunker and Dr. Rueben Richardson, and

(2) The affidavit of Harvey S. Wood, Attorney for Rufus Lee Smith explaining why Rufus Lee Smith did not answer the questions asked him in the proceedings involving Respondent.

Said affidavits are attached hereto and marked for identification, Respondent's Exhibits A and B, and expressly made a part hereof the same as if fully set out herein.

## PRAYER

Therefore, Respondent prays as follows:

(1) That the order of September 8, 1972, of this Honorable Court prohibiting Respondent from performing further judicial duties until this Court renders

its decision and judgment in the matter be set aside and held for naught.

(2) That the findings of fact and recommendations of the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio be vacated and set aside.

(3) That the proceedings against Respondent be dismissed and that the Relator and Board of Commissioners be prohibited from pursuing the matters against Respondent which are set forth in Case 168 or Case 172.

(4) In the alternative and if the relief prayed for above is refused, Respondent prays that this Honorable Court dismiss and recuse the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio from any further proceedings in Case 168 or Case 172 against this Respondent, and that the findings and recommendations of said Board of Commissioners be vacated and set aside and that this matter be remanded to a new unbiased, unprejudiced Board of Commissioners and Hearing Panel for hearings de novo with instructions from this Honorable Court to said Board of Commissioners and Hearing Panel that Respondent be granted all of his constitutional rights and his right to due process of law, and that the actions and proceedings of said Board of Commissioners and Hearing Panel be in accordance with the statutes of the State of Ohio, and that Respondent be informed under which rule the proceedings are being had, i.e., Rule V or VI, and that the order of this Honorable Court of September 8, 1972, prohibiting the Respondent from performing further judicial

functions be rescinded pending new findings of fact and recommendations by a newly constituted unbiased, unprejudiced Board of Commissioners.

(5) That no disciplinary order be entered disciplining the Respondent in any way.

(6) That this Honorable Court refuse to confirm the report on which the show cause order was issued.

(7) That the order prohibiting Respondent from performing further judicial functions be set aside.

(8) And for such other relief to which the Respondent may be entitled and which this Honorable Court believes should be granted.

George S. Heitzler, Jr.
By Counsel

Stanley E. Preiser
John B. Carrico
David C. McCue

Preiser & Wilson

1012 Kanawha Boulevard, East
P. O. Box 2506
Charleston, West Virginia 25329

Counsel for Respondent

**AFFIDAVIT**

I, Rufus Lee Smith, being first duly cautioned and sworn, depose and say that upon the advice of my attorney, Harvey B. Woods, I exerted my rights under the Fifth Amendment of the Constitution in proceed-

ings against Judge George S. Heitzler, due to the fact that certain Grand Jury proceedings and investigations were being held at the time of the hearing before the Cincinnati Bar Association;

And further, I exerted that same right due to the pendency of a suit by me against the Cincinnati Post Times-Star.

I further deny all allegations made against me by either Mr. Howard R. Wunker or Dr. Ruelben Richardson concerning my activities during my employment in the Domestic Relations Division, Common Pleas Court of Hamilton County, Ohio.

Rufus Lee Smith

Sworn to before me and subscribed in my presence this 12th day of October, 1972.

Ruby K. Phillips
Notary Public
Hamilton County, Ohio

My Commission Expires August 13, 1975.
Respondent Exhibit A

**AFFIDAVIT**

I, Harvey B. Woods, being first duly cautioned and sworn, depose and say that I am an Attorney at Law licensed to practice law in the State of Ohio;

That I represented Rufus Lee Smith in a hearing before the Cincinnati Bar Association in relation to an investigation of Judge George S. Heitzler;

That at the time of said hearing before the Cincinnati Bar Association, there was a Grand Jury investigation pending concerning alleged irregularities by my client, Rufus Lee Smith;

That as a result of said hearings pending, I advised Rufus Lee Smith to refuse to testify and to exert his rights under the Fifth Amendment of the Constitution;

Further, at the time of the hearing before the Cincinnati Bar Association, Rufus Lee Smith was required to testify before the Grievance Committee of the Ohio Bar; I was representing Rufus Lee Smith in a suit brought by him against the Cincinnati Post Times-Star, and since it was impossible for me to be in the room to protect my client, I advised him at that time to exert his rights under the Constitution at a hearing held in Dayton, Ohio in the proceedings against Judge George S. Heitzler which eventually resulted in the recommendation of suspension of Judge George S. Heitzler.

Harvey B. Woods

Sworn to before me and subscribed in my presence this 11th day of October, 1972.

Ruby K. Phillips
Notary Public
Hamilton County, Ohio

My Commission Expires August 13, 1975.
Respondent Exhibit B

**CERTIFICATE OF SERVICE**

The undersigned John B. Carrico, one of counsel for Respondent, hereby certifies that service has been made upon opposing counsel in this case and upon the Secretary of the Board of Commissioners by depositing a copy of the attached objections in the United States mail, properly addressed to counsel for Relator and to the Secretary of the Board of Commissioners and the proper United States postage attached, this 20th day of October, 1972.

One of Counsel for Respondent
John B. Carrico

STATE OF OHIO,
City of Columbus, SS.

CINCINNATI BAR ASSOCIATION,

*Relator,*

v.

No. DD 72-3

GEORGE S. HEITZLER, JR.

*Respondent.*

The Supreme Court of the State of Ohio. Of the Term of January, 1972. To-wit: December 15, 1972.

**ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on September 1, 1972, recommend-

ing that the respondent, George S. Heitzler, Jr., be indefinitely suspended from the practice of law, pursuant to Rule V, Section 6b of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration thereof, respondent's motions to dismiss and quash are overruled, the objections to such findings and to the recommendations of the board are overruled and it is ordered and adjudged by this Court that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and the respondent, George S. Heitzler, Jr., is indefinitely suspended from the practice of law.

The respondent, George S. Heitzler, Jr., is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, George S. Heitzler, Jr., surrender his certificate of admission to practice to the Clerk of this Court forthwith and that

his name be stricken from the roll of attorneys maintained by this court.

It is further ordered that the respondent, George S. Heitzler, Jr., pay the costs of these proceedings taxed in the amount of Five Thousand Eight Hundred Fifteen Dollars and eighty-two cents ($5,815.82).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rulve V of the Supreme Court Rules for the Government of the Bar of Ohio.

Approved: C. William O'Neil, Chief Justice

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. 51.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 15th day of December, 1972.

Thomas L. Startzman, Clerk
Sam F. Adkins, Deputy

The Cincinnati Bar Association, Relator, v. George S. Heitzler, Jr., Respondent.

[Cite as Cincinnati Bar Assn. v. Heitzler. (1972), 32 Ohio St. 2d .]
(DD No. 72-3—Decided December 15, 1972.)

*ON CERTIFIED REPORT* by the Board of Commissioners on Grievances and Discipline.

Respondent, an attorney at law duly admitted to practice in Ohio, was appointed Judge of the Cincinnati Municipal Court February 15, 1963, which office he continued to hold until after being unsuccessful in the ensuing election. Respondent was again appointed Judge of the Cincinnati Municipal Court on March 23, 1964, was thereafter elected and re-elected. He continued to hold said office until January 5, 1969. At that time he assumed, by election, the office of Judge of the Court of Common Pleas of Hamilton County, Division of Domestic Relations.

On August 16, 1971, the Cincinnati Bar Association filed a complaint with the Board of Commissioners on Grievances and Discipline, charging respondent with violations of the Canons of Judicial Ethics. On October 4, 1971, the bar association filed a supplemental complaint, charging respondent, through his counsel, with attempting improperly to influence the course of the disciplinary proceedings.

On December 16, 1971, the matter was heard before a panel of three members of the Board of Grievances and Discipline. The hearing consumed six days over an extended period of time, ending January 7, 1972, during which the panel heard, by testimony or stipulation, more than fifty witnesses, and received forty-seven documents into evidence. On August 4, 1972, the panel submitted its findings of fact and recommendations to the secretary of the Board of Commissioners, which findings and recommendations were thereupon reviewed and adopted by the Board of Commissioners, and were filed with this court on September 1, 1972.

The complaint of relator set forth eleven counts of alleged violations of the Canons of Judicial Ethics. Respondent's answer admitted many of the factual allegations of the complaint, but denied any misconduct or any violation of the Canons of Judicial Ethics.

The first count alleged that while respondent was separated from his first wife, from the latter part of 1969 until September 1970, one Carol Chasteen (now respondent's second wife) was present frequently in his apartment, and that their conduct "was such as to cause members of the apartment complex and others to believe that they were living together." Respondent contended that he employed Miss Chasteen "as an attendant for respondent's afflicted son" and that he "did not violate any judicial canon and did not live with the said, Carol Chasteen," but he did not specifically deny that their conduct was such as to give the impression alleged. Respondent was separated from his first wife in early 1969, and executed a separation agreement with her in January, 1970. She obtained a Mexican divorce from him in October, 1970, and respondent and Miss Chasteen were married in November, 1970, both occurring subsequent to respondent's voluntary appearance before a committee of relator to testify concerning his personal conduct. The board found that the evidence sustained the allegations of this count.

The second count alleged that respondent took an Ohio Bar Association trip to Majorca, Spain, in October, 1969, accompanied by Miss Carol Chasteen, at his expense, and that during that trip his conduct "was offensive to other members of the Ohio Bar Association

and their wives." Respondent admitted making the trip to Majorca, but denied engaging in any offensive conduct during the trip, and denied violating any canon of judicial ethics in connection therewith. The board, although finding evidence of questionable conduct, found the evidence to be "equally balanced as to whether respondent's conduct was excessive for such an outing or essentially different from that of the ordinary person" and thus found that the evidence did not support a finding against respondent upon this count.

The third count alleged that respondent also took two trips to Mexico with Miss Chasteen, which was admitted by respondent, but he denied engaging in any course of offensive conduct. This count was dismissed by the panel.

The fourth count alleged that respondent, while a judge, was observed in a downtown Cincinnati hotel in a state of intoxication, and conducting himself in a loud and offensive manner. Respondent, while admitting to having been at the hotel on occasion, denied ever conducting himself in a loud or offensive manner, or that he ever conducted himself "in any manner, save and except, that in keeping with his elected position." The board found that the evidence "fell far short" of sustaining the allegations of this count.

The fifth count alleged that respondent engaged in immoral conduct at a downtown Cincinnati hotel, which was denied by respondent, who demanded "strict proof thereof." The board found the evidence insufficient to sustain the allegations of this count.

The sixth count, which alleged impropriety by respondent in connection with his first wife's obtaining the Mexican divorce, was dismissed by the panel.

The seventh count, which alleged that respondent's personal financial investments in Harmony Loan Company, a Kentucky corporation, were in direct circumvention of Kentucky law, was dismissed by the panel for lack of sufficient evidence.

The eighth count alleged that respondent was guilty of misconduct in connection with his association with the Harmony Loan Company and its officers and directors. Respondent admitted the factual allegations of this count, but specifically denied that he violated any canon of judicial ethics in connection therewith. The board made a finding of misconduct in connection with this charge.

The ninth count alleged that respondent, while a judge of the Cincinnati Municipal Court, and a director of Harmony Loan Company, signed 487 orders in 357 cases wherein Harmony Loan Company was a party. Respondent denied this count "for want of knowledge," and contended that the count could not be considered for the reason that the acts involved did not occur within respondent's current term of office. At the hearing, respondent admitted signing numerous orders in cases brought by Harmony Loan Company while he was both a judge and a director of that corporation, but contended that these involved only default judgments, confessions of judgment, garnishments, and motions, and that they did not involve any contested matters, and that they were only ministerial

acts. The board made a finding of misconduct in connection with this count.

The tenth count alleged misconduct by respondent in hiring as a constable a man with a lengthy criminal record, who was subsequently discharged because of alleged bribery attempts on his part. Respondent admitted hiring the employee knowing of his criminal record and discharging him under the circumstances alleged, but contended that the employee was "in a menial, non-sensitive position" and that he was hired and retained "for many reasons other than political." The board made a finding of misconduct in connection with this count.

The eleventh count alleged that respondent hired his son and daughter to work in the Court of Domestic Relations. Respondent admitted these allegations, but denied any misconduct or violation of the Canons of Judicial Ethics in connection therewith. The board concluded that, although "such employment may technically amount to nepotism, the board believes that such employment did not amount to an intentional exploitation of nepotism."

The board dismissed the supplemental complaint, finding that the evidence failed to establish "that respondent directed the actions of his counsel which led to the filing of the supplemental complaint."

The board found respondent to have violated Canons 4, 12, 13, 25, 26, 29, 33 and 34 of the Canons of Judicial Ethics adopted by this court, concluded "that respondent over an extended period of time has displayed continuing indifference to the Canons of Judicial

Ethics, 'as a proper guide and reminder for judges,'" and recommended that respondent be suspended for an indefinite period from the practice of law.

The respondent not only filed objections to the findings and recommendations of the Board of Commissioners on Grievances and Discipline, but also filed a motion to quash and dismiss those findings and recommendations, and to dismiss and recuse each and every member of the board.

Following the filing of the findings of fact and recommendations by the Board of Commissioners on Grievances and Discipline, this court authorized and directed the Chief Justice to order respondent to hear no further cases or other matters and to perform no other judicial duties until a decision is rendered in this matter. (*Cincinnati Bar Assn.* v. *Heitzler* (1972), 31 Ohio St. 2d 187.)

The cause is now before this court for consideration of the report of the board and the objections and motions of the respondent.

*Mr. R. O. Klausmeyer, Mr. John J. Getgey* and *Mr. C. Donald Heile*, for relator.

*Mr. Stanley E. Preiser, Mr. John B. Carrico* and *Mr. David C. McCue*, for respondent.

*Per Curiam.* Respondent alleges that his constitutional rights were violated and he was denied due process of law by the Board of Commissioners on Grievances and Discipline, contending that his counsel was denied the right to file a brief on the merits with

the hearing panel; that a witness for relator and a member of the board sat with the board when they discussed this case and made their findings and recommendations; that he was denied the right to be heard by the board; that the board made its findings and recommendations without "an indepth review of the transcript of testimony and the exhibits"; that three members of the board had heard evidence against respondent in another proceeding; and that the board proceeded under Gov. R. V rather than Gov. R. VI.

A review of the record indicates that the proceedings of both the board and the hearing panel were conducted in accordance with Rule V of the Rules For The Government Of The Bar Of Ohio (formerly Rule XVIII of the Rules Of Practice).

While there was some confusion as to the time for filing briefs with the hearing panel, respondent was not prejudiced in this regard. The hearing panel and the board determined the matter prior to the actual filing of briefs by either relator or respondent. Furthermore, Gov. R. V confers no right upon either relator or respondent to file briefs before either the hearing panel or the board, and the filing of same is a matter within the discretion of the board or hearing panel. Respondent was given every opportunity to present any relevant evidence that he desired to present to the hearing panel.

Although a member of the board was a witness for the relator, the minutes of the board clearly indicate that such member "took no part in the discussion or voting" in the case.

Respondent was given a full and complete hearing before the hearing panel. Gov. R. V does not provide for an additional hearing before the entire board where the matter has been heard by a hearing panel. Neither does that rule, nor due process, require that each member of the board make "an indepth review of the transcript of testimony and the exhibits." The fact that three members of the board may have heard evidence against respondent in another proceeding does not disqualify them as members of the board. There is no indication that the findings and recommendations of the board herein were not predicated upon the complaint of relator, the answer of respondent, and the testimony and exhibits received in evidence before the hearing panel. Furthermore, there could be no prejudice to respondent in any event, since the action of the board was unanimous.

In addition, it is this court and not the board that makes the ultimate conclusion, both as to the facts and as to the action, if any, that should be taken. As stated in *Mahoning County Bar Assn.* v. *Ruffalo* (1964), 176 Ohio St. 263:

"In cases of this kind, the board of commissioners acts for and on behalf of this court. In doing so, it makes recommendations as to the facts which should be found and the action which should be taken by this court. However, this court has full responsibility for determining what the facts are and what action should be taken on those facts."

That both the hearing panel and the board afforded respondent a fair consideration and determination of the issues is shown by their action with regard to

Counts 2, 3, and 11 of the complaint. The evidence clearly is sufficient to support a finding of misconduct with respect to all three counts. Yet, the hearing panel dismissed Count 3, and both the hearing panel and the board found the evidence to be insufficient to support a finding of misconduct with regard to Counts 2 and 11.

Canon 4 of the Canons of Judicial Ethics requires that a judge's personal behavior in his everyday life "should be beyond reproach." Respondent admitted that he, while still married to, but separated from, his first wife, took his "girl friend" (now his second wife) with him, at his expense, on the trip to Majorca and on the two trips to Mexico, but he testified that they did not occupy the same room on any of the trips. Such conduct is not behavior beyond reproach within the meaning of Canon 4. Furthermore, the evidence permitted a finding of other offensive conduct by respondent during the Majorca trip. The board, while finding evidence of such conduct, found it to be "equally balanced, as to whether respondent's conduct was excessive" or "essentially different from that of the ordinary person, including members of the judiciary, under similar circumstances." However, a judge is charged with the responsibility of conforming to a higher standard of personal behavior than the ordinary person. A judge's conduct of personal behavior must be "beyond reproach." Improper conduct which may be overlooked when committed by the ordinary person, or even a lawyer, cannot be overlooked when committed by a judge. By accepting his office, a judge undertakes to conduct himself in both his official and personal behavior in accordance with the highest standard that

society can expect. As stated in Canon 34, "In every particular his conduct should be above reproach."

Respondent also admitted employing both his son and his daughter as charged by Count 11. Canon 12 provides that a judge should "avoid nepotism and undue favoritism in his appointments." The board, although finding this to be technically nepotism, found that it "did not amount to an intentional exploitation of nepotism."

Respondent contends further that the board should have proceeded pursuant to Gov. R. VI, rather than Gov. R. V. Gov. R. VI relates to proceedings for removal of judges, whereas Gov. R. V relates to the disciplining of members of the legal profession of Ohio. They are not mutually exclusive. A member of the legal profession, who is also a judge, may engage in misconduct which not only requires his removal from office, but also requires that disciplinary action be taken against him with regard to his right to practice law after such removal from office. Gov. R. V expressly provides that disciplinary action may be instituted against a member of the legal profession for violation of the Canons of Judicial Ethics while such member of the legal profession holds the office of judge.

This court previously considered the matter and held, in paragraphs five and six of the syllabus of *Mahoning County Bar Assn.* v. *Franko* (1958), 168 Ohio St. 17, that:

"5. Judges who are required by statute to be attorneys at law must necessarily maintain their status as members of the legal profession, and the Supreme

Court of Ohio, by virtue of its inherent power with reference to the disciplining of members of such profession, may provide by rule the basis for and the procedure to be followed in the disciplining of such members who hold judicial positions.

"6. The Canons of Judicial Ethics, as adopted by and made a rule of the Supreme Court of Ohio, provide a basis for the disciplining of members of the legal profession who hold judicial positions, and a breach thereof subjects such a member of the legal profession to disciplinary action according to the procedure set out in Rule XXVII of such court."

Respondent contends that since R. C. 2701.12 and Gov. R. VI were adopted subsequent to *Franko*, these constitute the exclusive method for disciplinary action against a member of the legal profession who is a judge for misconduct in office. We reject this contention. R. C. 2701.12 and Gov. R. VI do provide procedure for removal of a judge from office. Gov. R. V, on the other hand, does not pertain to the removal of judges from office, although proceedings under that rule may result in disqualification of a judge because he is required to be a lawyer. See *State, ex rel. Saxbe*, v. *Franko* (1958), 168 Ohio St. 338.

Gov. R. V(4) provides that:

"* * * all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefinite period or disbarred from the practice of law,

and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. * * *" Gov. R. V(5) (a) defines misconduct as:

"* * * any violation of any provision of the oath of office taken upon admission to the practice of law in this State, or any violation of the Code of Professional Responsibility or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude. * * *"

While it might be a more logical procedure, in cases of lawyers who are judges, to first proceed under Gov. R. VI for removal from office, and then proceed under Gov. R. V with respect to disciplinary action as a member of the legal profession, we find no error or prejudice to respondent in proceeding first with proceedings pursuant to Gov. R. V. This is especially true in this case, since the respondent, at the outset of the filing of the complaint, requested that the proceedings be pursuant to Gov. R. V (then Rule XVIII of the Rules of Practice). The supplemental complaint alleged that respondent utilized improper methods in attempting to influence the proceedings to be pursuant to Rule XVIII (now Gov. R. V) rather than Rule XXI (now Gov. R. VI). Respondent, in his answer thereto, stated that "respondent admits that through his counsel by invitation he * * * did suggest that all interests were best served in the disposition of this cause if proceedings were governed by Rule XVIII." Respondent cannot

now be heard to complain that his "suggestion" was followed. The evidence received by the hearing panel also indicates that this was the desire of the respondent. Accordingly, respondent's motions to dismiss and quash are overruled.

We now turn to consideration of the findings of the board. The finding of the board that the respondent's personal behavior in his everyday life, while a judge, gave the appearance of impropriety and was not beyond reproach (Count 1) and constituted a violation of Canon 4, is supported by, and required by, the evidence.

The board's finding that respondent violated Canons 13, 25 and 34 in connection with his business association with the Harmony Loan Company is also supported and required by the evidence. Respondent contends that he has not violated Canon 25 because other judges in Ohio also serve on boards of directors of savings and loan associations.

Canon 25 of the Canons of Judicial Ethics, as adopted by the then members of this court on January 27, 1954 (160 Ohio St.), differs from Canon 25 as adopted by the American Bar Association. Canon 25 provides that:

"A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify

such suspicion, [n] or use the power of his office [or the influence of his name] to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

The foregoing quoted language, in brackets, is included in Canon 25 as adopted by the American Bar Association but is not included in Canon 25 as adopted by this court in 1954. That court, by omitting the language in brackets from American Bar Canon 25, seemingly intended to give judges greater latitude in their business relationships than would be permitted by the American Bar Canon. In view thereof, it would appear that a judge does not necessarily violate Canon 25, as adopted in Ohio, *merely by serving* as a member of the board of directors of a loan company or a savings and loan association, where he in good faith discharges his duties as a director and nothing more is involved.*

If the fact of a judge's membership on the board of

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*The additional language explains the conclusion to the contrary in Opinion 254 of the Committee on Professional Ethics and Grievances of the American Bar Association. The Committee on Legal Ethics and Professional Conduct of the Ohio Bar Association apparently did not take cognizance of the difference in language between Canon 25 as adopted for Ohio, and that as adopted by the American Bar Association, in its Opinion No. 19, which was reaffirmed and reported in the October 23, 1972, issue of Ohio Bar (XLV Ohio Bar No. 41, page 1423). *Whether this will continue to be the rule for conduct of judges depends upon the action of this court in its consideration of the new Code of Judicial Conduct adopted by the American Bar Association, Canon 4 of which expressly prohibits a judge from serving as an officer, director, employee or advisor of any business organization.*

directors is used by the corporation to persuade others to patronize it or is used by the corporation to promote its business interests, the judge, by accepting membership on the board of directors, has given ground for "reasonable suspicion" that the judge is using "the power or prestige of his office" for that purpose. This is especially true if the judge does not regularly attend meetings of the board of directors, but is a member of the board in name only.

Even if under the Ohio Canon 25, respondent could serve as a member of the instant board of directors, he violated Canon 25 when Harmony Loan misused the fact of his membership. When he accepted membership on that board he undertook the affirmative duty to make certain that there would be no misuse made by Harmony of that membership.

Canon 13 provides, in part, that a judge "should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor."

Canon 33 provides, in part, that a judge should "in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

Count 8 alleges that:

"On the board of directors of Harmony Loan Company have been Joseph Becker, bailiff for Judge Heitzler in both courts, and Robert Stone, a Cincinnati

attorney who is a personal friend of Judge Heitzler, who appears with some frequency before Judge Heitzler, and frequently has lunch in a public restaurant with Judge Heitzler.

"James J. Matthews, president of Harmony Loan Company, was treasurer of Judge Heitzler's campaign in 1968 for the Court of Domestic Relations.

"Ralph Crisci, chief referee in Domestic Relations Court, was at one time assistant vice president and attorney for Harmony Loan Company.

"Sylvan Reisenfield, attorney for Harmony Loan Company, appears in the Domestic Relations Court before Judge Heitzler.

"Harmony Loan Company has from time to time issued brochures which contain the pictures and identifying names of its directors and officers, including Joseph Becker, Robert Stone and James Matthews, and Judge Heitzler.

"Relator says that in knowingly associating with Harmony Loan Company and its officers and directors and in permitting the publicity of his name as a judge in connection with the business of Harmony Loan Company, Judge Heitzler has violated Judicial Canons 13, 25, 33, and 34."

Respondent, as his answer to said count, stated that he "admits the allegations contained in paragraph 8 of said complaint and certificate filed herein, but specially and specifically denies that he violated any Canon of Judicial Ethics." This admission, together with the

evidence presented at the hearing, fully justifies a finding of misconduct by respondent in connection with his association with Harmony Loan Company.

Count 9 alleges misconduct by respondent in his handling of numerous cases in which Harmony Loan Company was a party while he was a judge of the Cincinnati Municipal Court. Respondent admitted handling such cases at a time when he was both a director of the company and an investor therein.

Canon 26 provides, in part, that "where he has a personal investment in an enterprise involved in litigation in the court, he should disqualify himself from acting in such litigation unless the interest is so slight that he does not believe it could affect the impartial performance of his official duties and the parties to such litigation are so informed and do not object."

Canon 29 provides, in part, that "a judge should abstain from performing or taking part in any judicial act in which his personal interests are involved."

Respondent contends that since the evidence indicates that he tried no "contested" case involving the Harmony Loan Company, and since the acts involved occurred during a prior term of office as judge of a different court, that he cannot now be charged with misconduct with regard thereto.

The evidence does not indicate that respondent heard any "contested" cases involving Harmony Loan Company, nor does it indicate that respondent disqualified himself from handling such cases. Respondent granted numerous default judgments and confessed

judgments to Harmony Loan Company while a judge of Cincinnati Municipal Court at a time when he had a substantial investment in said company and was a director thereof. Respondent also signed garnishment orders, continuances, dismissals, and ruled upon some motions.

The granting of a default judgment or a confessed judgment necessarily involves a judicial determination of whether the plaintiff is entitled thereto. The granting of a default or confessed judgment to an enterprise in which a judge has a personal investment constitutes acting in litigation involving such enterprise, in violation of Canon 26. Even where the judge's interest is so slight that it could not affect the impartial performance of his official duties, the judge cannot so advise the adverse parties, nor do they have any opportunity to object, where the judgment is entered by default or confession. Furthermore, in view of the numerous cases involving Harmony Loan Company in which respondent performed judicial acts, there is no possibility that his actions were the result of oversight.

In support of his position, respondent relies upon authority to the effect that a default judgment granted by an interested judge does not render such judgment void or subject to collateral attack in the absence of fraud. See *Ashland Bank & Savings Co.* v. *Houseman* (1915), 5 Ohio App. 165. However, that has no bearing upon the propriety or ethical considerations of a judge so acting.

Respondent contends further that most of the cases in which he acted were first heard by a referee. However, the remainder of the cases were not so heard.

And furthermore, assuming the cases were first heard by a referee and then the entry of judgment was signed by respondent, respondent took no precaution to prevent the appearance of impropriety in connection therewith, which the Canons of Judicial Ethics require of him.

In support of his contention that misconduct during a previous term cannot now be considered, respondent relies upon *State, ex rel. Vogt,* v. *Donahey* (1923), 108 Ohio St. 440; *McMillen* v. *Diehl* (1934), 128 Ohio St. 212; and *State, ex rel. Stokes,* v. *Probate Court* (1970), 22 Ohio St. 2d 120, all of which hold that, under the applicable statutes, an officer cannot be removed from office for misconduct during a previous term of office. However, it is pointed out in *Stokes* that this is not the result where a statute specifically provides for disqualification or removal for misconduct during a previous term, citing *In re Coppola* (1951), 155 Ohio St. 329, wherein it is stated at page 332:

"* * * the General Assembly has the power to require reasonable qualifications for office and if a statute provides that misfeasance and malfeasance during a previous term shall be a ground for the removal of a public official during his existing term, such a statute must be given effect."

R. C. 2701.12 specifically provides that a violation of the Canons of Judicial Ethics by a judge "since first elected or appointed to judicial office" constitutes cause for removal of such judge from office.

Furthermore, as pointed out above, this is not a removal-from-office proceeding, although it may indi-

rectly have that effect. Rather, this proceeding is a disciplinary action against a member of the legal profession, who is a judge, and will result in disciplinary action against respondent as a member of the legal profession. As stated in the second paragraph of the syllabus of *Mahoning County Bar Assn.* v. *Franko* (1958), 168 Ohio St. 17:

"The legal profession of Ohio includes every person who has been admitted to the practice of law in this state, by and under the rules for admittance thereto as adopted by the Supreme Court of Ohio, whose name is maintained on the Roll of Attorneys kept by such court, regardless of the subsequent capacity or status of such person."

There is no doubt that respondent was a member of the legal profession at the time involved, and continues to be, and it is that status which is the subject of this proceeding. Thus, the misconduct alleged occurred while respondent was a member of the legal profession of Ohio, regardless of whether it occurred during his existing, or a previous, term of office as a judge.

The evidence clearly supports the finding of the board that respondent violated the Canons of Judicial Ethics by handling numerous cases in which Harmony Loan Company was a party, at a time when he was a director of, and had a substantial investment in, said company.

As to Count 10, respondent admitted that he hired as a constable a man with a lengthy criminal record, knowing of such record. Canon 12 provides, in part, that "trustees, receivers, masters, referees, guardians

and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage." Canon 34 provides, in part, that a judge should "deal with his appointments as a public trust."

Respondent contends that these canons are not applicable to the employee in question because he was a "glorified usher" or "go for," being one who "fetches" the parties and their attorneys when it is time for their appearance. The employee was hired as a constable. Respondent described his duties as "to schedule various cases in before the various referees at the proper time." Respondent further testified with respect to this constable's duties that he "was to stand out in the hall and a list of the various hearings before the referees was furnished him. He would pull the folders and then as the respective attorneys came in with their clients ready to go on a case on preliminary motions and so forth, escort them into the various referee hearing rooms and come out. In the event he could not get cases or one referee was tied up in a rather lengthy case, then he would get another referee and shift cases around." We find that Canon 12 does apply to a constable with such duties.

Respondent also attempts to justify employment of this constable with a criminal record, on the grounds of rehabilitation, and testified that the practice followed by Hamilton County offices in the employment of persons with criminal records has been "if the man has paid his debt to society to give him a chance and

put him to work." We agree with the board that such rehabilitation should have been attempted by some means other than employment as a constable in Domestic Relations Court. Respondent testified further that the employee with the criminal record had assisted him in his "most recent campaign for Domestic Relations Judge, and one or two of the prior campaigns for Municipal Court."

Canon 12 requires that persons employed to aid in the administration of justice should have the strictest probity and should be selected with a view solely to their character and fitness. Obviously, employees with criminal records employed for the purpose of aiding in their rehabilitation have not been "selected with a view solely to their character and fitness." "Probity" means "unimpeachable integrity." Obviously, a person with a lengthy criminal record, including one felony conviction for burglary, is not possessed of the strictest probity. Respondent completely ignored Canon 12 with respect to this employment.

Evidence was received that the employee in question solicited bribes from at least two persons, one of which was allegedly paid. When the person, from whom the bribe not paid was solicited, advised respondent of the solicitation, respondent did not immediately discharge the employee in question, but retained him as an employee until the advent of newspaper publicity concerning the alleged bribe attempt. The only investigation respondent made was to ask the employee in question, and respondent stated: "I kept him on because I had no evidence whatsoever that he had done anything wrong." This was apparently predicated upon the failure of the person reporting the solicitation for

a bribe to produce for respondent a tape recording of the bribe solicitation. Respondent stated that: "* * * when he was suspended, he was first suspended when portions of an excerpt from a so-called tape appeared in the paper and he was linked to that and he was suspended without pay. * * *"

The finding by the board of misconduct by respondent in the hiring and retaining of the employee with the criminal record is fully supported by the evidence.

Respondent contends also that "Even if the findings of fact by a board of commissioners are supported by the evidence and confirmed by the Supreme Court of Ohio, the recommendations of the board of commissioners as to the disciplinary action to be administered are too severe for the violations proven under the circumstances.

The facts of this case clearly indicate either that respondent has little or no concept of the ethical behavior required of a judge by the Canons of Judicial Ethics in both his personal and official conduct or that he has such concept, but thinks so little of it that he disregards it completely. As stated in the opinion in *Franko, supra*, at page 36: "Either attitude toward ethics from an attorney at law undeniably would be reprehensible—from an attorney at law who has assumed a judgeship it is inexcusable." Misconduct by a lawyer who is a judge brings even greater discredit upon the legal profession than the same misconduct if performed by a lawyer who has not been entrusted with that high office. The board found that respondent by his conduct has violated Canons 4, 12, 13, 25, 26, 29, 33 and 34 of the Canons of Judicial Ethics.

Having carefully reviewed and considered the entire record, and the objections of the respondent and the briefs submitted, we conclude that the findings of the Board of Commissioners on Grievances and Discipline are fully supported by the evidence, and such findings are therefore affirmed. The objections to such findings and to the recommendations of the board are overruled. The recommendation of the board that respondent be indefinitely susepnded from the practice of law is confirmed, and such discipline is hereby imposed.

*Judgment accordingly.*

O'NEILL, C. J., WHITESIDE, HERBERT, CORRIGAN, STERN, LEACH and BROWN, JJ., concur.

WHITESIDE, J., of the Tenth Appellate District, sitting for SCHNEIDER, J.

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,
*Relator,*

v.

No. DD 72-3

GEORGE S. HEITZLER, JR.,
*Respondent.*

## MOTION TO STAY EXECUTION OF COURT ORDER PENDING APPEAL

Comes now Respondent, George S. Heitzler, Jr., and states that, by order of this Court of December 15, 1972, his right to practice law in the State of Ohio was indefinitely suspended, that he was ordered to surrender his Certificate of Admission to Practice to the Clerk of this Court, and that his name be stricken from the roll of attorneys, and that he was ordered to pay the costs of the disciplinary proceedings conducted against him, which costs were taxed in the amount of $5,815.82.

Further, Respondent says that said Order is erroneous, is not supported by the evidence, and is totally and completely without merit, and that he intends to seek review in the United States Supreme Court as soon as practible.

WHEREFORE, Respondent prays that this Court enter an Order staying execution of the Order previously entered on December 15, 1972, pending the outcome of Respondent's Petition for Writ of Certiorari to the United States Supreme Court.

George S. Heitzler, Jr.
By Counsel

By Counsel:
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing Motion to Stay Execution of Court Order Pending Appeal upon R. O. Klausmeyer, 2900 Du Bois Tower, Cincinnati, Ohio; John J. Getgey, 615 Provident Tower, Cincinnati, Ohio; C. Donald Heile, 3005 Carew Tower, Cincinnati, Ohio, and William D. Radcliff, Secretary, Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, c/o the Supreme Court of Ohio, Columbus, Ohio, by depositing same in the United States mail, postage prepaid, this 22nd day of December, 1972.

David C. McCue
One of Counsel for Respondent

THE STATE OF OHIO,
City of Columbus.

CINCINNATI BAR ASSOCIATION,
*Relator*,
vs.
No. DD 72-3

GEORGE S. HEITZLER, JR.,
*Respondent.*

1973 TERM
To wit:
January 12, 1973

**ENTRY**

Upon consideration of the motion, filed by counsel or respondent, to stay this courts order dated December 15, 1972, confirming the report of the Board of

Commissioners on Grievances and Discipline and indefinitely suspending the respondent from the practice of law, pending the timely filing of an appeal to The Supreme Court of the United States, it is ordered by the court that this motion be, and hereby is, denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page .....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 12th day of January, 1973.

THOMAS L. STARTZMAN, Clerk.
By Sam F. Adkins, Deputy.

APR 12 1973

MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1972

No. 72-1258

GEORGE S. HEITZLER, JR.,

*Petitioner,*

v.

CINCINNATI BAR ASSOCIATION,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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IN THE

# Supreme Court of the United States

October Term, 1972

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**No. 72-1258**

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GEORGE S. HEITZLER, JR.,

*Petitioner,*

v.

CINCINNATI BAR ASSOCIATION,

*Respondent.*

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**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO**

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## RELEVANT STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions cited by petitioner, the following provision of the Constitution of the State of Ohio is relevant:

ARTICLE IV: JUDICIAL

§ 2 The supreme court.

(A) . . .

(B) (1) The supreme court shall have original jurisdiction in the following: . . .

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(Amended May 7, 1968.)

At the time that the complaint in this matter was filed Rule XVIII was in effect and not Gov. Rule V as set forth

in the petition. The entire text of Rule XVIII is set forth in the appendix of this brief. Rule XVIII is a well thought out, reasonable, fair, workable rule for disciplinary proceedings against attorneys, which has become a model for the rules of other states. Its efficacy should not be disturbed in any manner by this court.

## COUNTERSTATEMENT OF FACTS

Although petitioner's summary of the complaint filed against the petitioner at the commencement of the disciplinary proceedings (pet. p. 9) is misleading, since the entire complaint is reproduced in petitioner's appendix, it will serve no useful purpose to point out the errors in the summary. This court is respectfully referred to the entire complaint: not petitioner's summary thereof.

The disciplinary proceedings of the Supreme Court of Ohio as set forth in Rule XVIII provided for hearing which hearings were generally held in the county in which the respondent resided. Nevertheless, in this case, at the request of Judge Heitzler and to accommodate him the Board of Commissioners on Grievances and Discipline ordered the hearings held in Dayton, Ohio (pet. App. p. A-17), a distance of some 60 miles away from Cincinnati, in order to avoid unfavorable publicity which Judge Heitzler feared might develop to his prejudice.

In footnote 1, (pet. p. 10) petitioner says: "At the close of the hearings before the Panel, the Bar Association added Canon 29 to the other Canons of Judicial Ethics which Petitioner allegedly violated." The fact is that petitioner voiced no objection to the addition, (T. 1398 and 1399). Also, the conclusion of the Panel with respect to violation of Canon 29 is supported by the same facts which were the basis for the complaint against petitioner. Nothing new was added which deprived petitioner of his right fully to defend the charges made against him. Canon 29

is obviously related to the Harmony Loan charges which are set forth in paragraph 9 of the complaint.

On page 14, petitioner refers to minutes of the Board of Commissioners on Grievances and Discipline, an excerpt of which appears in his appendix, pages A96-A97. The excerpt is misleading because it would appear that the only business considered by the Board of Commissioners on Grievances and Discipline on August 4, 1972 was the complaint against petitioner. Such was not the case. There are, though they are obscure, three asterisks indicating an omission (pet. App. p. A97) which shows that other matters were considered and Gordon A. Scherer, as a member of the Board, was therefore properly present to consider these other matters. It is obvious, from reading the minutes, that he took absolutely no part in the discussion of decision on the Heitzler case.

Petitioner should find no comfort in the fact that "the Ohio Grand Jury did not return a true bill" (pet. p. 14). The "Ohio Grand Jury" urged the continued investigation of Heitzler in the following language:

> The jury regrets the initial reticence of the Cincinnati Bar Association to submit the names and addresses of witnesses interrogated by the Investigative Committee. However, subsequent cooperation has been excellent and most helpful. The jury recommends that the Committee of the Bar Association continue its investigation of alleged irregularities and immoral activities concerning certain employees of the Court.

Petitioner suggests (pet. pp. 15-16) that he was not furnished with a copy of the Board's findings. Written findings of the Board were made available to petitioner in ample time to permit him to file a brief in the Supreme Court of Ohio and to respond to the Board's conclusions and recommendations.

## I.

## PETITIONER HAS NOT BEEN DENIED PROCEDURAL DUE PROCESS, NOR HAS HE BEEN DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL, NOR HAS HE BEEN DEPRIVED OF HIS RIGHT TO COUNSEL.

Petitioner argues that since the Hearing Panel of the Board of Commissioners on Grievances and Discipline set up a schedule for filing briefs and then decided the matter without considering briefs, the petitioner was denied procedural due process and the effective assistance of counsel.

This contention ignores the well-defined procedure adopted by the Supreme Court of Ohio for the discipline of members of the bar in Rule XVIII (App. pp. A2-A19). The Board of Commissioners on Grievances and Discipline is a fact-finding arm of the Supreme Court of Ohio. It is not a lower court. It acts through Hearing Panels of three men each, which hear all of the evidence and then make recommendations to the entire Board. The Board, in turn, makes findings of fact and recommendations to the Supreme Court of Ohio but it is the Supreme Court of Ohio itself which decides, and only the Supreme Court which decides, whether an attorney at law should be subject to disciplinary procedures.

There is nothing in Rule XVIII which provides for the filing of briefs with the Board of Commissioners. More importantly, in this case the findings of fact and recommendations of the Hearing Panel were filed with the Board of Commissioners on August 4, 1972 and the brief of relator (respondent herein) was actually filed on August 9, 1972, five days after the Hearing Panel had made its findings of fact and recommendations. Therefore the Hearing Panel could not possibly have considered the brief of the respondent, Cincinnati Bar Association, in making its determination, so that the petitioner, George

S. Heitzler, Jr., could not have been prejudiced by the fact that the Cincinnati Bar Association filed a brief. The petitioner was not denied due process of law simply because he was not given the right to file a brief at a time prior to the time that the Board of Commissioners filed a certified report with the Supreme Court of Ohio. He had ample opportunity to file and did in fact file a brief with the Supreme Court of Ohio. He presented his arguments, through his counsel, at a full hearing before the Supreme Court of Ohio.

Insofar as procedural due process is concerned, in addition to the hearing before the Supreme Court of Ohio, petitioner was given notice of the charges against him by the respondent's complaint which was filed to initiate the proceedings. Petitioner was represented by counsel all through the hearing before the Hearing Panel and thereafter the Supreme Court of Ohio.

## II.

## THE FACT THAT GORDON SCHERER WAS A MEMBER OF THE BOARD OF COMMISSIONERS AND SAT IN ON THE DELIBERATIONS AND VOTING OF THE BOARD OF COMMISSIONERS HAD NO BEARING ON THIS CASE BECAUSE THE MINUTES OF THE BOARD OF COMMISSIONERS CLEARLY REFLECT THAT HE TOOK NO PART IN THE PROCEEDINGS.

It does appear that a member of the Board of Commissioners was a witness for the respondent, and that said member of the Board was present during the discussion and voting for a recommendation that the petitioner be indefinitely suspended from the practice of law. It is clear from the minutes that the witness-member took no part in either the discussions or the voting. The petitioner, in making an assertion that the petitioner's rights of due

process had been violated by the fact of this member's presence, makes the assumption that the other members of the panel present were intimidated by the witness-member's presence, and that their recommendation was changed as a result of his presence. This assumption is made by the petitioner with no evidence of any wrong-doing. It is submitted that such a claim serves no other purpose than to impugn the veracity and honesty of the Board of Commissioners.

Scherer was present but the minutes clearly indicate that he took no part in the decision or discussion in the Heitzler case. Scherer was properly present because other matters were discussed (pet. p. 31) and as a Commissioner, he had to give due consideration to those other matters. Petitioner argues (pet. p. 29) as follows:

> It is hard to believe, indeed impossible to imagine that the sole member of the Board of Commissioners from Hamilton County who had testified in an attempt to have Petitioner indicted, and who gave 40 pages of transcribed testimony before the Board of Commissioners in disciplinary proceedings seeking the removal of Petitioner from office sat stone faced, impartial and dispassionate through a 2½ hour meeting and never once gestured, indicated, or otherwise showed satisfaction or displeasure with the proceedings then in deliberation. It strains credulity to believe the other Board members could sit and impartially weigh what evidence they considered with Scherer present.

There is absolutely no evidence of what went on in the meeting although such evidence was surely available to petitioner, if such evidence existed, by a proper motion addressed to The Supreme Court of Ohio. There being no evidence, petitioner cannot draw an inference of impropriety on the part of Gordon Scherer or the Board of Commissioners. Such an inference would be pure speculation.

The law does not permit pure speculation and since the minutes of the meeting clearly stated that Mr. Scherer took no part in the proceedings, the law cannot permit petitioner's speculation of impropriety. See *Gedra* v. *Dallmer Co.*, 153 Oh. St. 258 (1950).

Petitioner makes the audacious statement in a footnote (pet. p. 30) that disciplinary procedures for lawyers and judges in the state of Ohio need to be reviewed by this court because, he says, that this court held over four years ago in *In Re Ruffalo*, 390 U.S. 544 that Ruffalo was denied due process, but that the Ohio Supreme Court has refused to reinstate him. The fact is that the *Ruffalo* case cited by petitioner, involved Ruffalo's disbarment in the federal courts (390 U.S. 544, 20 L.ed. 2nd 117 at 123). The state court proceedings were never the subject of orders by this court. To make such a careless statement not only impugns the integrity of the Supreme Court of Ohio but is obviously a deliberate attempt on the part of the petitioner to mislead this court.

The Supreme Court of Ohio, effective January 1, 1957, completely revised its disciplinary procedure. It adopted Rule XXVII, thereafter numerically changed to Rule XVIII, and thereafter to Gov. R. V. The procedure first adopted by the Supreme Court of Ohio on January 1, 1957 is the same procedure which was subsequently recommended for adoption in other states by the Clark Committee of the American Bar Association in June, 1970, 13 years after the Supreme Court of Ohio first adopted Rule XVIII. The recommendation of the Clark Committee has been substantially followed in at least 17 states and the District of Columbia. (A.B.A. Report of Special Committee on National Coordination of Disciplinary Enforcement, August, 1972).

Ohio's disciplinary procedures have been commended. (letter from The Hon. Tom C. Clark, App. p. 1).

## III.

## PETITIONER WAS NOT DENIED DUE PROCESS OF LAW, NOTICE AND AN OPPORTUNITY TO BE HEARD NOR WAS HE DENIED THE RIGHT TO COUNSEL BECAUSE HE WAS NOT GIVEN AN OPPORTUNITY TO ATTACK FINDINGS OF FACT AND RECOMMENDATIONS OF THE HEARING PANEL BEFORE THE BOARD FILED ITS FINDINGS WITH THE SUPREME COURT OF OHIO.

Respondent refers to Rule XVIII(15) of the Supreme Court of Ohio Rules which governed the proceedings in this case (App. p. A10). Under Rule XVIII(15) when the Board of Commissioners made a recommendation of indefinite suspension, the Board was required to make a final certified report of the proceedings including its findings and recommendations and to file it with the Clerk of the Supreme Court. Nowhere in the rules of procedure of the Supreme Court are there any provisions wherein the petitioner must be given the right to attack the findings of fact and recommendations of a hearing board prior to the filing of the recommendations with the Supreme Court of Ohio. It is at this juncture in the proceedings that the petitioner is given the opportunity to file his objections to the findings of fact. Petitioner was not denied due process of law because he was not given a right to file exceptions to, or attack the findings of fact and recommendations of the Hearing Panel prior to the time that the Board of Commissioners filed its certified report with the Supreme Court.

The Supreme Court of Ohio is the ultimate fact-finder in disciplinary cases.

Petitioner has contended throughout his Petition For a Writ of Certiorari that he was denied due process of law under the fourteenth amendment to the United States Constitution.

The record will reveal that petitioner was afforded, some

two years prior to the finalization of this matter, the opportunity to appear on two separate occasions before the Grievance Committee of the Cincinnati Bar Association and answer the then allegations pending against him. Subsequently, after an original complaint was filed, a Motion to Change Venue was granted petitioner in order to protect his rights insofar as local publicity might be detrimental to the rights of petitioner.

In the subsequent hearings in Dayton, Ohio, 50 witnesses appeared, 47 documents were introduced in hearings involving 6 days. 1408 pages of testimony were taken. Petitioner had ample opportunity to present any factual or procedural matter before the Hearing Panel.

In May, 1972, a subsequent hearing was held in regard to the Supplemental Complaint, which complaint has since been dismissed. Petitioner was further given the opportunity to raise procedural and factual questions at the hearing.

Further, petitioner was afforded the opportunity to file objections to the findings of the Board of Grievances before the Supreme Court of Ohio. He was then afforded an opportunity for oral argument, on the merits, before the Supreme Court of Ohio.

He has had a full opportunity to be heard and to present evidence at the appropriate administrative and judicial levels in Ohio and cannot now be heard to say that his due process rights, under the fourteenth amendment of the United States Constitution, were violated.

## IV.

## IT WAS PROPER FOR THE SUPREME COURT OF OHIO TO HAVE CONDUCTED THE DISCIPLINARY PROCEEDINGS AGAINST PETITIONER UNDER RULE XVIII DEALING WITH DISCIPLINARY PROCEDURE FOR ATTORNEYS RATHER THAN PURSUANT TO RULE XXI DEALING WITH THE RULE OF JUDGES.

Whereas the petitioner throughout his brief refers to "Gov. R. V" and "Gov. R. VI," as respondent pointed out before, the rule in effect at the time the complaint against the petitioner was filed was Rule XVIII and the corresponding rule concerning the discipline of judges was Rule XXI. While respondent does not wish to be confusing on this point, it is petitioner who is confusing by referring to rules which were not in effect at the time these proceedings were brought.

In this case, the Cincinnati Bar Association's complaint was filed under "Rule XVIII and/or XXI of The Supreme Court of Ohio." (pet. App. p. A-1). Thereafter, petitioner filed an answer, respondent filed a supplemental complaint, and petitioner filed an answer to the supplemental complaint (pet. App. p. A-14), wherein he stated:

> 1. Respondent admits that through his counsel by invitation, he did confer with John J. Getgey on August 16, 1971, and during the course of said conversation through counsel, did suggest that all interests were best served in the disposition of this cause if proceedings were governed by Rule XVIII.

No objections were made by petitioner's counsel (respondent below) to proceeding under Rule XVIII at the time of the hearing before the Hearing Panel (pet. App. p. A-19 and A-41). The Board of Commissioners, who heard all of the facts in the original complaint against petitioner, indicated in their findings of facts as follows:

> The original Complaint was submitted in the alternative under Rule XVIII and Rule XXI of the Rules of the Supreme Court of Ohio. The Supplemental Complaint did not specify under which Rule it was submitted. Both matters were heard as a Complaint and Supplemental Complaint under Rule XVIII. *No objections were made by counsel for Respondent to the matters being so heard.* (Emphasis added)

Having raised no objection below, indeed having encouraged it, petitioner cannot now be heard to complain that the Supreme Court of Ohio acted improperly in disciplining petitioner as an attorney under Rule XVIII.

Petitioner refers to Ohio Revised Code § 2701.11 and § 2701.12 which deal with the removal of judges and says that they are the sole exclusive and jurisdictional provisions for the removal of judges and that, therefore, any other proceedings are void.

These statutes were passed by the legislature of the state of Ohio in 1965. Subsequent to that time the voters of the state of Ohio adopted an amendment to Article IV, Section 2 of the Constitution of the State of Ohio effective May 7, 1968, quoted in this brief on page 1. This gave the Supreme Court of Ohio original jurisdiction in the discipline of all persons admitted to the practice of law in Ohio and all other matters relating to the practice of law. Petitioner was a lawyer as well as judge. The Supreme Court of Ohio chose to proceed, as it was empowered to do by the Constitution of the State of Ohio, under Rule XVIII and discipline petitioner as a lawyer.

The Supreme Court of Ohio has very properly held in the case of *Mahoning County Bar Association* v. *Franko*, 168 Oh. St. 17 that attorneys who are judges must maintain their status as attorneys. It has been long the rule that when an attorney seeks the office of judge and becomes bound by the high professional standards imposed by the judicial canons he can lose his license to practice as an attorney by violating a judicial canon, because by becoming a judge he does not stop being an attorney.

It is respectfully submitted that Ohio Revised Code § 2701.11 and § 2701.12 which were adopted prior to the constitutional amendment amending Article IV, Section 2 of the Constitution of the State of Ohio in 1968 cannot

interfere with the Supreme Court of Ohio's right to discipline members of the legal profession.

Where both parties have appeared in a case and participated in it neither party can thereafter question jurisdiction. *Forsyth* v. *Hammond*, 166 U.S. 506.

## V.

## THE FACT THAT THREE MEMBERS OF THE BOARD OF COMMISSIONERS IN THE INSTANT CASE SAT AS A HEARING PANEL IN A COMPANION CASE INVOLVING DIFFERENT DISCIPLINARY CHARGES HAS NO BEARING WHATSOEVER UPON THE PETITIONER'S RIGHTS IN THIS CASE.

It appears to be the petitioner's contention that since three members of the duly constituted Board of Commissioners on Grievances and Discipline had heard a second group of charges against the same petitioner, those three members should not have been permitted to have taken part in the proceedings of the Board of Commissioners. The petitioner makes this bald assertion with absolutely no evidence that his rights were prejudiced during the course of this hearing. Respondent must, therefore, assume that petitioner contends that the mere fact that the three members were present at the hearing and voted for the recommendation in and of itself prejudiced the rights of the respondent. Respondent believes that this contention is totally without merit. Without the votes of these three members, the decision would still have been unanimous. Petitioner must, therefore, assume that the matters contained in the second charge, namely, his manipulation of trust funds and a failure to report certain assets for inheritance tax purposes was fully discussed before the Board prior to the recommendation. This panel is made up of respected members of the Bar of Ohio, care-

fully selected by the Supreme Court of Ohio. To make such an assumption is totally unwarranted.

Petitioner's argument is an absurdity. Logically applied, it would prevent the Board itself from considering a case involving a lawyer who had been previously disciplined or even charged. In fact, even the Supreme Court of Ohio itself would be precluded from hearing a case if the same lawyer had been previously before it on a disciplinary charge. The Board members are not jurors: they are acting as an arm of the Supreme Court of Ohio itself.

## VI.

## THE HOLDING OF THE SUPREME COURT OF OHIO THAT PETITIONER LEFT THE APPEARANCE OF UNLAWFUL COHABITATION WITH CAROL CHASTEEN IN VIOLATION OF CANON 4 OF THE CANONS OF JUDICIAL ETHICS IS SUBSTANTIATED AND IS NOT VIOLATIVE OF DUE PROCESS.

Petitioner's argument on this point is simply one of the weight of the evidence.

Respondent submits that the following facts amply support the findings of the Supreme Court of Ohio in this regard.

During the time specified in the complaint, Judge Heitzler lived at 2697 Erlene Drive, Cincinnati, Ohio, a complex of apartment buildings consisting of separate buildings, each of which contained 12 apartments. T. 13. He lived there from approximately the first of 1969, T. 14, until April 1, 1971, T. 13. Judge Heitzler was formerly married to Ruthe Heitzler, from whom he was divorced on October 12, 1970, T. 15. He was married to Carol Chasteen on November 14, 1970 at Newport, Kentucky, T. 15. Since the first of 1969 up until the time of his divorce, Judge Heitzler was separated from his first wife, Ruthe Heitzler, T. 16. He had first met Miss Chasteen in the latter part of

1968 while she was employed as a waitress at the Playboy Club, T. 17. According to Judge Heitzler she gave him assistance in taking care of his son, the services being rendered in Judge Heitzler's apartment, T. 17-18. Although Judge Heitzler testified that he paid Miss Chasteen for the services rendered to his son in administering medication, he did not take any income tax deductions for those services, nor did he file, with the federal government, a Form 1099, nor did he make any payment on account of Social Security for Miss Chasteen, T. 21-22. Miss Chasteen was in Judge Heitzler's apartment early in the morning, during the day, during the evening, T. 37. Although Judge Heitzler gave a statement to the Bar Association, upon his own request, in September, 1970 concerning his alleged misconduct, he did not mention at that time that Miss Chasteen acted as his son's nurse, T. 1387.

Charles Wurster, who was Judge Heitzler's landlord in the apartment on Erlene Drive, who was called as a witness on behalf of the petitioner, testified, T. 1020, that he saw Carol Chasteen go into the apartment and not come out and that sometimes he saw her coming out when he hadn't seen her going in shortly before.

Gabriella Bode testified that she thought that Carol Chasteen lived there, T. 380, and that she had seen Carol Chasteen carrying in groceries, T. 319-392.

Nick Greco testified, T. 566, that he lived at 2695 Erlene Drive in the apartment complex for about two years; that Judge Heitzler lived next door, that he saw Carol Chasteen leaving and entering the building with Judge Heitzler; and in the morning when he would go to work on several occasions he saw her on the patio of Judge Heitzler's apartment shaking out throw rugs with her robe on at appromimately 7:30 in the morning, T. 567. He thought that Carol Chasteen was living in the apartment with Judge Heitzler, T. 568.

The general reputation of the Erlene Drive complex was questionable. Mr. Wurster, the landlord, testified that he received a rental application from a Gabriella M. Greco; that he later found out that a Gabriella Greco and Gabriella Bode were one and the same person, T. 1024; that she lived in the partment after Vince Greco moved out, T. 1025; that later on Vince and Mary Ellen, presumably, Greco, moved into the same building, T. 1034; that if a couple came into rent an apartment and said they were man and wife that is all he was interested in, T. 1035; that when Vince came in with Mary Ellen the fact that Gabriella had been living there first as Vince's wife didn't bother him, although it did bring up a question in his mind, T. 1035; that so long as Gabriella paid the rent he didn't ask any questions, T. 1036.

Mr. Wurster also testified that he saw Carol Chasteen leave the apartment in the morning about 7:30—8:00 A.M., T. 1029. Mr. Wurster left no doubt that if Carol Chasteen were on the balcony of Judge Heitzler's apartment shaking out a rug it would be no problem seeing her from across the driveway, T. 1038.

On the question about how many unmarried couples were living in the Erlene Drive complex, Mr. Wurster testified, T. 1043, as follows:

> "A. I don't know. I don't have the contracts with me.
>
> "Q. And you don't check on that sort of thing?
>
> "A. Not if they are married or not. All we check on is their jobs . . . ."

At least two people, Mrs. Bode and Mr. Greco thought that Carol Chasteen was living there with George Heitzler. Judge Heitzler admitted that she was there at all hours, T. 37.

The Supreme Court of Ohio did not believe that Judge Heitzler retained the services of a Playboy Bunny simply

to give medicine to a sick child. The Supreme Court of Ohio believed that the action of Judge Heitzler, a married man, living in an apartment, inhabited, to some extent, by unmarried couples, and having a former Playboy Bunny in his apartment at all hours of the day and night gave the appearance of impropriety.

Canon 4 provides that a judge's personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach. Canon 34 provides that in every particular a judge's conduct should be above reproach.

The Supreme Court of Ohio found that in his personal living habits, while married to Ruthe Heitzler, and while either living with Carol Chasteen on Erlene Drive or giving the appearance that he was living with Carol Chasteen on Erlene Drive, Judge Heitzler was not conducting himself so as to be above reproach. There was ample evidence on which to base this finding.

## VII.

## THE DECISION OF THE SUPREME COURT OF OHIO IN REFERENCE TO PETITIONER'S ASSOCIATION WITH HARMONY LOAN COMPANY IS FULLY JUSTIFIED AND PETITIONER'S CONDUCT IN THAT REGARD VIOLATED CANONS 13, 25, 33, AND 34.

Petitioner says that he presented uncontradictory evidence by affidavits which are now part of the record in this case, denying any knowledge of the use of his name in any prospectus put out by Harmony Loan Company.

The reason that the affidavits are uncontradicted is that the respondent at no time had the opportunity to contradict them.

The fact is that petitioner, who objects violently that he was denied due process, does not seem to want to obey

the most elementary rules of evidence. At no time during the hearing before the Hearing Panel in this case, which consumed six days, did the petitioner deny any knowledge of the use of his name in any prospectus, nor did the vice president of Harmony Loan, Mr. Spampinato, who testified at the hearing at length, testify that Judge Heitzler had no knowledge of the use of his name.

Petitioner seems to believe that he can ignore elementary rules of evidence and hearing procedures; completely fail to adduce any probative evidence at the hearing; and then, by filing affidavits attached to a motion to quash, get evidence into the record.

Such is not the case.

The facts on Judge Heitzler's connection with Harmony Loan and the facts of his giving the impression of favoritism are as follows:

Judge Heitzler was a Director of Harmony Loan Company, a Kentucky corporation, from 1964 to August, 1971, T. 28. Harmony Loan was a small loan company, not a savings and loan association as suggested by petitioner. Judge Heitzler invested $30,000 in it, $20,000 being his own money, $5,000 belonging to his son, Geoffrey and $5,000 belonging to Carol Chasteen, T. 29. His investments in Harmony Loan, in detail, were as follows, T. 30-31:

| *Date* | *Investment* | *Dollar Amount* |
|---|---|---|
| December 22, 1964 | 20 full paid non-assessable preferred shares | $2,000.00 |
| January 27, 1966 | 50 full paid non-assessable preferred shares | 5,000.00 |
| April 29, 1966 | 50 shares full paid non-assessable preferred | 5,000.00 |

| *Date* | *Investment* | *Dollar Amount* |
|---|---|---|
| April 29, 1966 | Five-year debentures | 5,000.00 |
| February 26, 1970 | Ten-year seven percent debentures | 5,000.00 |
| March 27, 1970 | Ten-year seven percent debentures | 5,000.00 |
| April 27, 1970 | Five-year seven percent debentures | 3,000.00 |

Judge Heitzler, Geoffrey Heitzler and Carol Chasteen were all non-residents of Kentucky, T. 31, 32. Ex. 4, 5 and 6 being the Harmony Loan Prospectuses all state that sale is limited to residents of the State of Kentucky. Nevertheless, respondent, contrary to the allegations of the complaint, has been unable to determine any Kentucky statutory law prohibiting the sale of securities to nonresidents of the State of Kentucky. From the fact that the sale was limited by the prospectuses, we can presume that it is contrary to a filing with the Kentucky Division of Securities. It is also against the law of the State of Ohio to sell securities not registered in the State of Ohio to Ohio residents (Section 1707.07 O.R.C.).

Judge Heitzler's investments in Harmony Loan are undisputed and are set forth above. As stated above, he was a Director from 1964 until August, 1971. His name appears as a Director in the prospectuses, Ex. 4, 5, and 6. He is prominently featured in a brochure which was distributed by management of Harmony Loan, Ex. 7. Ex. 7 contains his picture and the fact that he is a judge. Mr. Mathews, who was the president of Harmony Loan testified that Ex. 7 was a brochure which Harmony Loan paid to have prepared, T. 467, that it was mailed to people, and that it was made available to customers of Harmony Loan who could

pick copies of Ex. 7 up, T. 468. Brochures similar to Ex. 7 were "lying all over the place," T. 468.

Si Cornell, who testified as a witness for the petitioner, said he knew that Judge Heitzler was associated with Harmony Loan and thought it was a building and loan company. When told that it was a small loan company, he said oh well, there are "good loan sharks and bad loan sharks," T. 1341. The use of the word "sharks" is relevant. It reflects a public image.

George C. Young, president of the Cincinnati Better Business Bureau, testified that Harmony Loan had a poor reputation in the community, T. 562. Mr. Young, as president of an organization constantly receiving complaints from people is certainly in a position to know.

Who were the principals of Harmony Loan Company, upon whose Board of Directors Judge Heitzler sat for nearly seven years?

Mr. James Mathews was the President and Director for about ten years. He and Mrs. Mathews and Frank Spampinato and Mrs. Spampinato owned all of the Class A voting stock, T. 456.

What kind of a businessman was Mr. Mathews?

He signed Ex. 4, a prospectus, as a result of a registration statement which had been filed. On Ex. 4 he lists his address as 180 Fourth Street, Silver Grove, Kentucky, but he never lived there, T. 463-464. The same exhibit lists Judge Heitzler's address as 1708 Llanfair Avenue, Cincinnati, Ohio. Nevertheless, Judge Heitzler testified that he hadn't lived at that address since the first of 1969, T. 14. The prospectus, Ex. 4, says that Judge Heitzler had been a judge of the Domestic Relations Court for five years prior to the date of its issue, T. 465, Ex. 4. Nevertheless, Judge Heitzler was elected to the Domestic Relations Bench for the first time in 1968 and assumed office in January, 1969, T. 7.

Harmony Loan Company was run by an executive committee consisting largely of Mr. Spampinato and Mr. Mathews, T. 480. Judge Heitzler came only to one or two meetings of the directors in seven years, T. 480. One may ask, at this point, why Judge Heitzler would consent to be a Director of an organization whose meetings he did not attend, about which he knew nothing, and yet which he must have known used his name for promotional purposes.

Harmony Loan received a cease and desist order from the Division of Securities of the State of Ohio for selling its securities in Ohio contrary to the laws of Ohio, T. 485, Ex. 33. It appears that certain letters went out over the signature of James Mathews soliciting investments of Ohio residents, one of which is in evidence as Ex. 27, T. 486. Harmany Loan Company received a 15-day selling suspension in Kentucky in 1970, T. 503.

Mr. Spampinato was in the furniture business and used car business with Mr. Mathews and he quite honestly testified that these businesses were "feeders" to Harmony Loan, T. 725. In fact, Mr. Mathews and Mr. Spampinato had a little feeder empire going of discount-type furniture stores, used cars, and insurance, T. 469-478. Twenty-five to thirty percent of the Harmony Loan Company business came from these other Mathews and Spampinato interests, T. 510.

Mr. Spampinato testified that there was a "paper" Board of Directors of seven which had maybe two meetings in five or six, or seven years, T. 718. Mr. Mathews testified, on the other hand, that the Board had regular quarterly meetings, T. 480. Mr. Spampinato said that he and Mr. Mathews made the big decisions and ran the business by themselves.

Mr. Spampinato hit the nail on the head, T. 719, when he said that it was an honor to have these dignitaries like Judge Heitzler on the Board. It was good advertising as well as being an honor.

Although Mr. Mathews could not remember anything about the address at 180 Fourth Street, Silver Grove, and he didn't know what was there, Spampinato remembered it. He testified that Mr. Mathews had lived over there at one time when he had had a spat with his wife, T. 727.

Mr. Spampinato was aware of the 1965 cease and desist order against Harmony Loan. He also was aware of the suspension in 1970. He also testified that at the time he and Mr. Mathews purchased their interests in Harmony Loan they were also residents of Ohio and not of Kentucky, T. 764-765.

Mr. Spampinato was in the used car business, T. 722. Not that there is anything wrong with the used car business, but it at least makes one pose the question about why a judge, first of the Municipal Court and then of the Domestic Relations Court, should become closely and publicly associated with people in the discount furniture, used car, and small loan business. The public image of a used car dealer is not good. The public image was aptly stated, indirectly, but nonetheless meaningfully by petitioner's witness, Si Cornell, who testified as follows, T. 1341-1342:

> "Q. What about the general concept of the reputation of a used car dealer?
>
> "A. Well, I knew a railroad man called Honest John because he never had stolen a boxcar.
>
> "Mr. Goodman: Thank you. That is all I have."

Si Cornell, having been qualified as an expert on reputations by petitioner's counsel, T. 1327, 1328, testified as to the reputations in the community of Mr. Mathews and Mr. Spampinato as follows, T. 1346-1347:

> "Q. Now, you mentioned something that you were acquainted with some of the other members of the Board of Directors of Harmony Loan.
>
> "A. I just know them. In other words, I have met them.

"Q. You knew of their reputations?

"A. Yes.

"Q. The indications was that their reputation didn't enjoy the high level in your mind that Judge Heitzler? (Sic.)

"A. No. I most certainly would not say that Mathews and Spampinato, in my mind, at least, are not on a par, reputable par with Judge Heitzler, no.

"Q. Would it be good judgment or poor judgment, then, for Judge Heitzler to knowingly associate himself in a business status with such people?

"A. Well, from the standpoint of social scene, perhaps not. However, the business was operating beyond the jurisdiction of his court and I don't see where there would be any conflict. The business was even in a separate state. He had absolutely no legal standing any time he crosses that bridge. He is just one more citizen as far as Kentucky is concerned and a transient at that."

The brochure, Ex. 7, also contained pictures of Joseph Becker and Robert Stone. Joseph Becker is Judge Heitzler's bailiff. Robert Stone is a lawyer-optometrist who appears with some frequency before Judge Heitzler. Ralph Crisci, who is Chief Referee in Domestic Relations Court, was at one time an officer of Harmony Loan and acted as its attorney. All of these people have dined in public places with Judge Heitzler. Mr. Crisci and Mr. and Mrs. Stone accompanied Judge Heitzler to Majorca. They were in the same "group." Judge Heitzler and Mr. Stone have also traveled together on other occasions.

It is obvious that Judge Heitzler was, to an extent, under the influence of cronyism when he served as a member of the Board of Directors of Harmony Loan Company. Relator has alleged that Judge Heitzler's actions with respect to Harmony Loan Company and its personnel are in violation of Judicial Canons 13, 25, 33 and 34. Canon 13 reads in part that a judge "should not suffer his conduct to justify

the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person."

Canon 25 reads in its entirety:

"25. Business Promotions and Solicitations for Charity.

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of this office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, or use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

It would be difficult to fathom a more direct violation of Canon 25 that Judge Heitzler's conduct in regard to Harmony Loan Company.

Judge Heitzler testified, T. 35-36, that for about a year and one half he had lunch regularly at a place called the Hangar, a public restaurant in downtown Cincinnati with a group including Dr. Stone. Dr. Stone is an attorney, T. 1194, and an optometrist, T. 1195. He had been a friend of Judge Heitzler for a considerable period of time, T. 1201. It was this intimacy and friendship which lead a female bartender in the Side Door Cafe named Betty, to recommend to Stanton Matlock, Dr. Stone as an attorney who could get someplace with Judge Heitzler after Matlock had been frustrated over several years in a stalled divorce case, T. 180-187.

The Canons which petitioner is charged with having violated go beyond moral turpitude. In fact, this argument and petitioner's arguments VIII and IX prove that petitioner misconceives the position of a judge. Petitioner was not charged with the violation of a specific criminal statute or statutes, but of Canons designed to require the highest standard of conduct from one who serves as a judge and lawyer. One of the most important aspects of a court is the respect which it commands from the citizens. If a court does not command respect, its effectiveness is diminished and the rule of law itself becomes eroded. It is for this reason that judges should not only avoid impropriety itself but the appearance of impropriety. A lawyer is not compelled to be a judge. He accepts the office voluntarily together with all of the high responsibilities which they entail and he should not be heard to complain of the violation of constitutional rights simply because he has been charged with violating higher standards of conduct than would apply to the ordinary citizen.

## VIII.

## JUDGE HEITZLER WHILE A JUDGE OF THE MUNICIPAL COURT AND A DIRECTOR OF HARMONY LOAN CO. SIGNED NUMEROUS ORDERS WHEREIN HARMONY LOAN COMPANY WAS A PARTY, AND SUCH CONDUCT VIOLATED CANONS 4, 13, 25, 26, 29 AND 34 OF THE CANONS OF JUDICIAL ETHICS.

Mr. Daniel Feldhaus, Clerk of Hamilton County Municipal Court, made a tabulation and summary of the cases in which Harmony Loan Company was a party wherein Judge Heitzler, as Judge of the Municipal Court, participated, T. 665-667. The exhibit that he prepared is Ex. 12 which lists 357 cases wherein Harmony Loan Company was a party in which Judge Heitzler signed 487 orders while he was a Judge of the Municipal Court.

Judge Heitzler testified as follows, T. 37:

> "Now, while you were a Director of Harmony Loan Company and while you had an investment in Harmony Loan Company did you ever hear as a Judge any cases in which Harmony Loan Company was a party plaintiff?
>
> "A. Yes, sir."

The nature of these cases were described by Judge Heitzler, upon examination by his own counsel, T. 68, as follows:

> "A. ——default judgments, the granting of confessed judgments, the setting aside of default judgments, garnishments, the ordering of money paid in to Court on garnishments—that is when a lawyer withholds the money and the Judge has to sign an order ordering the money paid in to Court—continuances and dismissals.
>
> "Q. Judge, specifically, did you ever participate as a judge in any contested case while you sat on Municipal Court in which Harmony Loan Company was a party?
>
> "A. Not to my knowledge, I did not, and I will say no, I did not, sir."

Whether the Judge participated in a contested case is of little import insofar as the Canons of Judicial Ethics are concerned. Canon 25 has been quoted above. Canon 29, which was added to Count 9 by motion to amend, T. 1398, reads as follows:

> "29. Self-Interest.
>
> "A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account but he should, of course, refrain from *any judicial act* in such controversy." (Emphasis added.)

Canon 29 refers to *any* judicial act. A director of a corporation, as well as an officer of a corporation, is a party to any proceeding for purposes of the cross-examination rule and for other purposes. A corporation can only speak through its Board of Directors and its officers. It is respondent's position that when Harmony Loan Company was a party in the court, Judge Heitzler as a Director of Harmony Loan and as a substantial investor had "personal litigation" within the broad meaning of the second sentence of Canon 29.

Also involved is Canon 26, the first paragraph of which reads as follows:

> "26. Personal Investments and Relations.
>
> "A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

Judge Heitzler retained his personal investments in Harmony Loan Company while he was a Judge of the Municipal Court, which was frequently a party to litigation before him.

Although the Judge makes much of the fact that he heard no contested cases to his knowledge, this is disputed by a practicing attorney, Arthur Schuh, who, although his memory is admittedly vague, testified positively that he tried a case before Judge Heitzler in Room A. of the Municipal Court wherein Harmony Loan, represented by Schuh, was a plaintiff, T. 339. Judge Heitzler made no dis-

closure of his personal interest in Harmony Loan, T. 341. Although Schuh was collection attorney for Harmony Loan Company for at least four years, from 1963 to 1967, he did not know that Judge Heitzler had a personal interest in it, T. 344.

Richard Rawe, City Editor for the Post-Times Star, who made a study of the Domestic Relations Court situation, testified that Judge Heitzler ruled more than 120 times in cases wherein Harmony Loan Company was involved, T. 683. Gerald White, a reporter for the Cincinnati Enquirer, gave testimony to the same effect, T. 778-780. The fact that Judge Heitzler was a Director of Harmony Loan Company and that he acted in a judicial capacity in cases involving Harmony Loan Company was certainly known by these gentlemen, two members of the public.

Although Judge Heitzler testified that he does not recall hearing any contested case in which Harmony Loan Company was a party, on redirect examination he testified that he probably heard a motion in the case of *Harmony Loan Company* v. *Williams*, which was a motion to stay the proceedings, T. 85, and that he signed an entry overruling a motion to quash and granted defendant ten days to plead in another case involving Harmony Loan Company, T. 86.

The fact that violations of canons occurred before petitioner was elected to the Common Pleas bench does not mitigate against the violations. An attorney upon election to one judicial position and subsequent election to another does not cease to be a member of the legal profession, and must be held accountable for all violations of the canons no matter in what term of office they occurred.

Both Rule XVIII and the Canons of Judicial Ethics contain express provisions indicating their applicability to petitioner because he is a member of the legal profession: not because of the elective process of his judicial position. In 1954, the Supreme Court adopted the Canons of Judicial

Ethics and declared that the Canons were binding upon "all members admitted to practice law in the state of Ohio . . ." (See Rule XVIII, Rules of Practice of the Supreme Court of Ohio [1959].) The procedure for applying the Canons is currently found in Rule XVIII, which contains a preamble linking the procedure to the Supreme Court's power over the bar of Ohio. The jurisdiction of the Board of Commissioners created under Rule XVIII, Sections 1, 2, the definition of misconduct, Section 5(a), and the methods of discipline, Section 6, expressly apply to members of the Bar of Ohio who become judges. For example, misconduct is defined as any violation of the Canons of Judicial Ethics and the methods of discipline, are applicable to any attorney "or judge found guilty of misconduct," Section 6. (App. p. A5.)

For purposes of the disciplinary power of the Supreme Court of Ohio over a judge under Rule XVIII, the incident of the judge's membership in the bar of Ohio is separated from the judge's position as an elected official. The manner and effect of discipline under Rule XVIII is expressly attached to the judge's privilege to practice law in Ohio.

None of the cases cited by the petitioner deny the Ohio Supreme Court's power to discipline a judge as a member of the bar through disbarment or suspension from practice. Both the *Stokes* (22 Oh. St. 2d 120) and *McMillen* (123 Oh. St. 212) cases relate to the separate question of the removal of any publicly elected official, including a judge, from his office. *Stokes* involved a complaint filed by electors against a mayor under a general removal statute (Ohio Rev. Code Ann. § 733.72 (c) [1953]) which applied to any misfeasance of malfeasance committed by any officer of a Municipal Corporation while in office. Similarly, *McMillen* concerned a removal action against a judge under a general removal statute (Ohio Gen. Code § 10-1, now Ohio Rev. Code Ann. § 3.07 [1953]) applicable to certain types

of misconduct by any person holding office in the state, county, or municipality. The *McMillen* case was an action against a judge but the judge's privilege to practice law, his membership in the bar, and the disciplinary power of the Supreme Court over members of the bar were not in issue.

Ohio case law, including the *Stokes* and *McMillen* cases cited by petitioner, does not insulate an elected public official, including a judge, from removal from office for misconduct during a prior term of office. A re-election does not *ipso facto* toll the operation of removal statutes. The question of whether an elected official can be removed from office for misconduct during a prior term is "essentially one of legislative intent" manifest in the applicable removal statute. (*Stokes*, *supra* at 123.)

Petitioner during his prior term of judicial office did not cease to be a member of the legal profession of Ohio. *Mahoning County Bar Association* v. *Franko*, 168 Ohio St. 17 (1958). As a member of the bar, he continued to be subject to the disciplinary power of the Supreme Court under Rule XVIII which includes disbarment or suspension from the practice of law for violation of the Canons of Judicial Ethics. Rule XVIII, Section 5. (App. p. A5.)

The opinions of the Ohio Supreme Court in both *Stokes* and *McMillen* cited by the petitioner are consistent with this conclusion. In both cases, the causes for removal were based upon misconduct in prior terms of office. Removal was denied because the removal statutes involved in those cases did not set forth misconduct in a prior term as a ground for removal and the past misconduct did not carry over to the public officials' present terms of office.

In *McMillen*, the action against a Common Pleas Judge was based upon a removal statute (Ohio Gen. Code § 10-1, now Ohio Rev. Code § 3.07 [1953]) authorizing removal of a public official for "misconduct in office." The judge was

charged with misconduct involving moral turpitude in that he borrowed money from lawyers who practiced before him, and discriminated in favor of these lawyers in the disposition of legal matters. All the borrowing transactions had taken place during prior terms of judicial office and none of the debts owing to lawyers had been incurred since the date of the beginning of the judge's present term of office. The court noted that had these obligations been fully paid prior to the judge's present term of office, these transactions would not constitute a cause for removal. The court's position, although dicta, was consistent with the reuirement of the statute that the misconduct be "in office," which, by virtue of the penal character of the statute referred to the present term of office. (See e.g., *State ex rel. Stokes* v. *Probate Court*, 22 Ohio St. 2d 120, 124 [1970].) With regard to the debts that had not been paid by the beginning of the judge's present term, there were factual findings negating discrimination by the judge in his present term as a result of these debts. Since the showing of discrimination was an element of removal for misconduct involving moral turpitude, and the Supreme Court was disinclined to reject the factual findings on this issue, removal was denied.

The removal statute in *Stokes*, *supra* (Ohio Rev. Code, § 733.72 [1953]) contains the same limitation on the causes of removal as the statute in *McMillen*. An action was filed in a Probate Court against a mayor under a statute permitting removal from office for "malfeasance and misfeasance in office." The mayor challenged the jurisdiction of the Probate Court over the subject matter of the claim. Subsequent to the filing of an appeal to the Ohio Supreme Court from an adverse ruling on the jurisdictional question—but before decision by the court—the mayor was reelected at a regular municipal election on November 4, 1969. As a result of the re-election, all the alleged mis-

conduct occurred in a prior term; consequently, the court held, "the issue (of removal) presented to Probate Court is now moot." (*Stokes, supra* at 124.) Consistent with the *McMillen* rationale, the court in *Stokes* interpreted the "in office" qualification of misfeasance or malfeasance as causes for removal to refer to the present term of office, that is, the term from which removal was sought.

The critical distinction, therefore, between the Heitzler case and *McMillen* or *Stokes* cases is the legislative intent manifest in the applicable removal statute with regard to misconduct in a prior term as a cause for removal. The court in *Stokes* said that the denial of removal turned on "the absence of clear legislative language making conduct in prior terms a ground for removal from office under this section." *Stokes, supra* at 124.

## IX.

## THE HIRING BY PETITIONER OF A CONVICTED FELON AS AN EMPLOYEE OF THE COURT, WITHOUT REGARD TO HIS ABILITY, BUT BEING MOTIVATED SOLEY BY POLITICAL CONSIDERATIONS, CONSTITUTED A VIOLATION OF JUDICIAL CANON 12.

It is the height of impertinence on the part of petitioner's counsel to seek to make part of the record in this case by a motion to quash filed in the Supreme Court of Ohio the affidavit of Rufus "Snowshoe" Smith as to why he took the Fifth Amendment when called to testify at the hearing before the panel and the affidavit of his alleged attorney as to why Rufus "Snowshoe" Smith took the Fifth Amendment. The fact is that Rufus "Snowshoe" Smith took the Fifth Amendment at the hearing before the Hearing Panel and refused to testify, thus denying the Hearing Panel and this Court either the benefit, or the handicap, of his testimony as the case may be.

All of the erudite articles about rehabilitation of criminals which the petitioner cites in his brief; all of the lofty idealism which petitioner now flouts in the faces of this Court are totally destroyed by a simple examination of the record and the real reasons behind the hiring of Rufus "Snowshoe" Smith. Rufus "Snowshoe" Smith was not hired because of Judge Heitzler's lofty idealism in attempting to rehabilitate a criminal. He was hired for political reasons. While criminal rehabilitation is a lofty ideal, you don't make a security guard at Tiffany's out of a jewel thief anymore than you would put rabbits out to guard the lettuce.

The facts in this entire sordid episode are as follows:

Rufus "Snowshoe" Smith worked on Judge Heitzler's campaign, T. 37-38. Shortly after he became Domestic Relations Judge on January 5, 1969, Judge Heitzler hired Rufus "Snowshoe" Smith as a Constable, T. 38-39. The duties of a constable were to schedule cases before referees, to "pull folders" and to escort litigants.

At the time he was employed, Rufus "Snowshoe" Smith had a lengthy criminal record, T. 46, 70, 80-81. Judge Heitzler was familiar with the fact that he got the nickname "Snowshoe" following a burglary because the police were able to track him through the snow, T. 1392. Richard Spencer, the custodian of the records of the Cincinnati Police Department, identified the exhibits pertaining to Rufus "Snowshoe" Smith, Ex. 17-17B, inclusive. Mr. Spencer testified, T. 347, that the arrest record of Rufus "Snowshoe" Smith showed 50 arrests, Ex. 13. On the Cincinnati rap sheet, Ex. 14, there were 16 serious offenses listed, T. 349. Ex. 15, the felon registration, reflects Rufus "Snowshoe" Smith's periods of incarceration. He was incarcerated in the Ohio Penitentiary on the charge of burglary, T. 349-350. Ex. 16 is the FBI rap sheet which

lists crimes committed outside Cincinnati, T. 350-352. Mr. Spencer made positive identification of Rufus "Snowshoe" Smith through his photograph, Ex. 17-A. These records were available to Judge Heitzler, T. 354.

Two witnesses testified that Rufus "Snowshoe" Smith either bribed or attempted to bribe them, Howard Wunker (whose name is consistently misspelled in the transcript as "Wonker"), and Reuben Richardson. Mr. Wunker testified that Rufus Smith offered to help him to get his daughter's children returned to her for $4,000.00, T. 521, and then Rufus "Snowshoe" Smith later reduced this figure to $250.00, T. 522. Dr. Richardson testified that Rufus offered to see that his, Dr. Richardson's, divorce "came out alright" for $1,000.00 and Dr. Richardson gave Rufus $1,000.00, T. 411. He testified that Rufus "Snowshoe" Smith was familiar with Dr. Richardson's divorce file and on one occasion brought the file out to Dr. Richardson's house, T. 415.

Dr. Richardson is a licensed, practicing physician and it is difficult to imagine why he would lie about a charge that could involve criminal prosecution against himself on a bribery charge.

It is obvious that the Hearing Panel, which heard the testimony and observed the witnesses, believed Dr. Richardson and Mr. Wunker and did not believe Mr. and Mrs. Atkins. The findings of the Hamilton County Grand Jury were not before the panel and are indeed no part of this case as petitioner well knows. Nor are the affidavits of Wilbert E. Stagenhorst, attached as petitioner's Exhibit 6 to petitioner's motion to quash and dismiss any part of the record in this case.

The fact is that Rufus "Snowshoe" Smith had access to files and used them in his attempted bribes of at least two litigants in the court.

Respondent assumes that petitioner will vouch for the credibility of his own witnesses. One of such witnesses was Si Cornell who was questioned by Mr. Henry, a member of the panel, T. 1343, 1344, as follows:

> "A. Rufus took to drinking pretty bad and he kept wanting me to write stories about how great a fellow Rufus was and I didn't think that was very truthful so I didn't write them.
>
> "Q. But well prior to the newspaper articles I take it you knew Rufus was there?
>
> "A. Yes.
>
> "Q. And you knew of his record?
>
> "A. Yes, I knew he was there. I assumed that he was there for political reasons and that were good and sufficient. In other words, the way it came to me, apparently Rufus claimed to have or possibly even did have some kind of sway in the colored community and thought that the fact that he was employed, well, blackmail, almost, 'Higher (Hire) me or you will have trouble.' You follow me? [Sic.]
>
> "Mr. Henry: Thank you. That is what I understand the whole thing to be. 'If you don't want another riot, Baby, get me a job.' "

He was further questioned by Mr. Bridgewater, another member of the panel, T. 1344, as follows:

> "By Mr. Bridgewater:
>
> "Q. Do you believe that Rufus was fully capable of making such threats, whether he could implement them or not?
>
> "A. I believe he is thoroughly capable of making them. Whether he had any actual influence with the colored community, I have no idea."

Si Cornell, petitioner's witness, testified, T. 1338, that he thought that Rufus "Snowshoe" Smith was mentally deficient, that Rufus "Snowshoe" Smith was "obviously a walking case of trouble." Si Cornell said that politicians have to place people for various reasons and one of these happened to be the Domestic Relations Court. He stated that since Rufus "Snowshoe" Smith bragged openly that he could cause trouble in the colored community, Rufus "Snowshoe" Smith was given a job.

In response to a question about whether he knew that Rufus "Snowshoe" Smith had a police record, Si Cornell answered "yes," T. 1338. In response to a question, T. 1338-1339, as to whether he would put him on the payroll, Si Cornell said "I wouldn't even talk to him."

Si Cornell testified that he believed Rufus "Snowshoe" Smith to be perfectly capable of making threats whether he would implement them or not, T. 1343, 1344.

Judicial Canon 12, the first paragraph thereof, reads as follows:

> "12. Appointees of the Judiciary and Their Compensation.
>
> "Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments."

The violation of this Canon in the hiring of Rufus "Snowshoe" Smith is too obvious to bear further comment.

## CONCLUSION

For all the above reasons, the petition for write of certiorari should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I served three true and correct copies of the foregoing Brief in Opposition to the petition for writ of certiorari, including the appendix hereto, upon Stanley E. Preiser, 1012 Kanawha Boulevard, East, P.O. Box 2506, Charleston, West Virginia, 25329, by depositing the same in the United States mail, postage prepared by air mail this 11th day of April, 1973.

R. O. KLAUSMEYER
*Counsel for Respondent*

## APPENDIX

SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543

February 5, 1970

Dear Mr. Beirne:

I was pleased to receive the editorial from the Cincinnati Post and your letter of the 29th.

I hasten to reassure you that I have indeed delineated Ohio as a leader in handling grievance procedures. You have one of the best programs in the country, and I have repeatedly emphasized that your state is an example of what we should aim for in our proposals.

Keep up the good work!

With my congratulations on your fine program and my best wishes.

*Sincerely,*

s/ TOM C. CLARK

MR. C. R. BEIRNE
*Beirne, Wirthlin & Manley*
3312 Carew Tower
Cincinnati, Ohio 45202

## RULE XVIII [1]

## DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

**(1) Creation of Board of Commissioners on Grievances and Discipline.** There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1*, comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2*, comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3*, comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4*, comprising Lucas County. *District 5*, comprising Crawford, Delaware, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6*, comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7*, comprising Franklin County. *District 8*, comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton Counties. *District 9*, comprising Coshocton, Fairfield, Knox, Licking, Muskingum and Perry Counties. *District 10*, comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11*, comprising Portage and Summit Counties. *District 12*, comprising Cuyahoga County. *District 13*, comprising Ashtabula, Columbiana, Geauga, Lake, Mahoning and Trumbull Counties. *District 14*, comprising Carroll, Stark and Tuscarawas Counties. *District 15*, com-

[1] Same as former Rule XXVII as amended March 11, 1964.

prising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16*, comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17*, comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, each of whom shall have authority to execute journal entires on behalf of the Board of Commissioners and of panels thereof.

(2) **Jurisdiction of Board.** The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided,

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension for an indefinite period from the practice of law, or judge, or

(b) concerning the mental illness of any attorney and counselor at law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State.

(d) upon reference by this Court of conduct affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court but did not take place in the actual presence thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise.

(3) **Referral for Investigation.** The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attention for investigation, as hereinafter provided.

(4) **Application of Rule; Authority and Duty of Local Committees.** From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefinite period or disbarred from the practice of law, and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Any committee authorized by any regularly organized bar association or by the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct, contempt, or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

**(5) Definitions.**

**(a) Misconduct.** Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

**(b) Mental Illness.** Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

**(6) Manner of Discipline.** Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

**(7) Effect of Discipline.** A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

**(8) The Complaint; Where Filed; By Whom Signed.** A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent

said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

**(9) Duty of the Board Upon Filing of the Complaint.**

**(a) Notice to Respondent.** The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

**(b) Suspension of Right to Practice Pending Disposition of Misconduct Complaint.** After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported by a certified copy of the judgment entry of the Court convicting the Respondent.

**(c) Mental Illness Suspension.** After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination as provided in (d) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

**(d) Examination.** If the complaint or answer alleges existing mental illness unsupported by a journal entry of

a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

**(e) Termination.** Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

**(10) Hearing by Panel of Three Commissioners.** After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

**(11) Dismissal of Complaint.** If the panel finds that the complaint or evidence is insufficient, the panel shall make its certified report of the proceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter back to the panel for further hearing or the administering of the proceedings before the

panel. The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

(12) **Private Reprimand; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such notice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

(13) **Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

**(14) Review by Entire Board of Commissioners; Board to Administer Private Reprimand.** Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

**(15) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board After Review.** If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

**(16) Show Cause Order Issued by the Court to Respondent.** On the filing of such final report of the Board of

Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) **Response to Order to Show Cause and Objections.** The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(18) **Answer Briefs.** Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) **Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order.** After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar

association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) **Proceedings Private; Exceptions.** All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) Where the respondent shall request in writing that they be public, or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

**(21) Petition for Reinstatement.** No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State, or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

**(22) Contents of Petition for Reinstatement.** Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possess all of the qualifications, mental, educational and moral which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

**(23) Costs to Be Deposited with Petition for Reinstatement.** Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

**(24) Requisites for Reinstatement.** No person shall be reinstated unless he has established by clear and convincing evidence that he possess all of the qualifications, mental educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule XVII shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

**(25) Petition for Reinstatement Referred to Board of Commissioners.** Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of

Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

**(26) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court from Denial of Petition by Board of Commissioners.** The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section 22(c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the

final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (22)(c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

**(27) Manner of Service of Notices, etc.** Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

**(28) Quorum of Panel or Board.** A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

**(29) Clerk Is Agent for Service of Notices on Nonresident Attorney.** Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk

of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

**(30) Manner of Service on Clerk; Record of Such Service Not a Public Record.** All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

**(31) Power to Issue Subpoenas.** In investigations and proceedings under this rule, upon application by the Chairman, Vice Chairman, Secretary, or Counsel of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Com-

missioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any subcommittee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

**(32) May Order Depositions.** The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

**(33) Effect of Refusal to Testify.** The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

**(34) Rules of Evidence.** All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

**(35) Docket of Complaints.** The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

**(36) Board May Prescribe Rules.** The Board of Commissioners may, subject to the prior approval of this Court,

adopt other rules and regulations not inconsistent herewith.

**(37) Rule to Be Liberally Construed.** The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving complaints of misconduct and petitions for reinstatements shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of this amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended Rule became effective shall continue to apply.

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IN THE

# Supreme Court of The United States

OCTOBER TERM, 1972

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**No. 72-1258**

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GEORGE S. HEITZLER, JR.
*Petitioner,*

v.

CINCINNATI BAR ASSOCIATION,
*Respondent.*

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## PETITIONER'S REPLY MEMORANDUM

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May 4, 1973

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## PETITIONER'S REPLY MEMORANDUM

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At page 1 and 2 of the brief filed by the Cincinnati Bar Association, in that portion of the brief that is supposed to contain the "statutory provisions involved," S. Ct. Rule 23 (d), the following *argument* appears:

> "At the time that the complaint in this matter was filed Rule XVIII was in effect and not Gov. Rule V as set forth in the petition. *** Rule XVIII is a well thought out, . . . rule . . . . Its efficacy should not be disturbed in any manner by this court."

This statement would tend to indicate that Petitioner has cited the wrong rule. The same assertion is made in Respondents' Brief, at page 10. Petitioner has cited

the correct rule. The precedessor to Rule V was in fact Rule XVIII, which dealt with the disciplining of attorneys and which was in effect when the complaint was filed (August 11, 1971); however as of February 28, 1972, the Supreme Court of Ohio renumbered the rules and Rule XVIII became Rule V. They are virtually verbatim.

Rule XVIII became Rule V dealing with the disciplining of attorneys. Rule XXI became Rule VI dealing with the sole and exclusive method of removing judges, all pursuant to the legislative mandate of the Ohio legislature. O.R.C. 2701.11 and 2701.12.

Whether we say Heitzler was improperly removed pursuant to Rule XVIII, now Rule V, dealing with attorneys, instead of being removed as a judge pursuant to the exclusive provisions of Rule XXI, now Rule VI, and O.R.C. 2701.11 and 2701.12, is a distinction without difference. He plainly was removed under the wrong rule. Due process of law demands removal if at all, under the right rule, which in this case was the Rule relating to judges, Rule XXI, now Rule VI.

Reference is respectfully made to Argument IV, pages 35-43 of the Petition where the *entire* problem presented by the improper removal proceedings is discussed.

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At page 7 of its brief, the Cincinnati Bar Association levels an unwarranted attack upon counsel for the Petitioner that cannot go unanswered.

Petitioner at p. 30, N. 9 of the Petition argues that the Ohio disciplinary procedures for lawyers and

judges needs to be reviewed by the Supreme Court of the United States because the Ohio Supreme Court has just refused to reinstate John Ruffalo notwithstanding the decision of this Honorable Court in *In re Ruffalo*, 390 U.S. 544 (1964). This, cries the Cincinnati Bar Association, is an "audacious statement." In their brief they then boldly state that:

> "The state court proceedings [in *Ruffalo*] were never the subject of orders by this court. To make such a careless statement not only impugns the integrity of the Supreme Court of Ohio but is obviously a deliberate attempt on the part of petitioner to mislead this court." (Brief in Opposition, p. 7)

Counsel for the Cincinnati Bar Association apparently did not read Mr. Justice Douglas' statement in *Re Ruffalo* at 390 U.S. 544, 550 where he stated:

> "Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here *is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.'* Selling v. Radford, 243 U.S. 46, 61 L. Ed. 585, 587, 37 S. Ct. 377." (Emphasis added.)

The Cincinnati Bar Association likewise completely misread the holding of this Honorable Court: viz that Ruffalo had no notice that the additional charge would be leveled against him until *after* he had given testimony in the *state* proceedings. Mr. Justice Douglas concluded at 390 U.S. 544, 551, 552:

> "How the charge would have been met had it been originally included in those leveled against

petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows.

> "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process."

Therefore a careful reader concludes that the state court proceedings were so infected with a lack of procedural due process that no federal disbarment could follow. Despite this clear and concise pronouncement from the Highest Court of this country, the Supreme Court of Ohio has denied the petition for reinstatement filed by John Ruffalo. Petition, p. 30, N. 9.

Petitioner again asserts that "the disciplinary procedures for lawyers and judges in the State of Ohio needs to be reviewed by this Honorable Court."

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At page 8 of its brief, the Cincinnati Bar Association makes the rather startling admission that:

> "Nowhere in the rules of procedure of the Supreme Court [of Ohio] are there any provisions wherein the petitioner must be given the right to attack the findings of fact and recommendations of a hearing board [sic! should be hearing *panel*] prior to the filing of the recommendations with the Supreme Court of Ohio." (Emphsis added.)

Petitioner submits that the above-quoted provision is a clear cut admission of the obvious and utter lack of procedural due process infecting all Ohio disciplinary proceedings.

The logical outcome arising from the Cincinnati Bar Association argument is that the Bar Associations in Ohio are free to dredge up whatever charges they choose, file them, and after hearings, the 3-man Hearing Panel *and then* the 17-man Board of Commissioners have untrammeled freedom to make whatever factual findings and recommendations they choose, all without notice, hearing or objections by a judge. The unfortunate judge is "sidelined" while all the crucial factual findings and recommendations are made, and then, and only then, is the unfortunate judge first allowed to object.

Procedural due process demands far more. See the Petition, pp. 30-34.

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At page 10 of its brief, the Cincinnati Bar Association seems to say that Petition via his counsel agreed and voiced no objection to proceeding under Rule XVIII (now Rule V) rather than Rule XXI (now Rule VI). Thereafter on p. 12 of the brief the Bar Association cites *Forsyth* v. *Hammond*, 166 U.S. 506 (1897) for the proposition that where both parties have appeared in a case and participated in it, the issue of jurisdiction may not be questioned. *Such an assertion is decidedly wrong.* First, this Honorable Court has unequivocally held that neither the failure to object nor the consent of the parties to a suit can confer *subject matter jurisdiction* on a court. See eg: *Metcalf* v. *City of Watertown*, 128 U.S. 586 (1888). Exactly that issue is presented here. There is little question that the *personal jurisdiction* over Heitzler was effective since he filed an answer. However, if he was removed from office pursuant to the wrong rule, then this clearly deals with subject matter jurisdiction.

Second, the Bar Association's reliance upon *Forsyth* v. *Hammond*, 166 U.S. 506 (1897) is completely misplaced. The precise issue there dealt with an attempt to collaterally review city annexation proceedings in the federal courts when in fact the state's highest court had already rendered a final decision upholding the annexation. However, the Seventh Circuit ruled that the annexation was invalid. A clear conflict between the decision of the Indiana Supreme Court and the Seventh Circuit Court of Appeals was presented.

The plaintiff, Forsyth, had participated in the state proceedings including the appeal to the Indiana Supreme Court. Justice Butler ultimately ordered the suit dismissed, and at 166 U.S. 506, 517 asked,

> "Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another tribunal acting independently, and having no appellate jurisdiction?"

No independent forum is involved in the case at bar. No collateral review is sought. No problems of *res judicata* are involved. This Honorable Court, should it grant Certiorari, unquestionably has the power to review the disciplinary decision of the Supreme Court of Ohio. The reliance on *Forsyth* by the Bar Association is clearly wrong.

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At page 11 of their brief, the Cincinnati Bar Association seems to say that the Amendment to Art. IV. Section 2 of the Ohio Constitution justifies the removal of a *judge* under disciplinary procedures for *attorneys* for alleged violations of Canons of *Judicial* Ethics.

Neither the language of the amendment, nor due process of law sustain such an untenable position.

Petitioner does not challenge the power of the highest court of any state to conduct appropriate disciplinary proceedings according to appropriate procedures. We do respectfully submit that where a well defined, precise and exclusive procedure is provided first by the legislature of the State of Ohio, O.R.C. 2701.11 and 2701.12, and later by rule of the Supreme Court itself, (Rule XXI, now Rule VI, for the removal of judges) then a judge can only be removed from office for alleged violations of Canons of Judicial Ethics by that well defined, precise and exclusive procedure. He cannot be removed as a *judge* for alleged violations of *judicial* ethics pursuant to rules for disciplining *attorneys*. (Notably, the Cincinnati Bar Association could find no authority other than the *Franko* case, the inapplicability of which has previously been discussed and reference is respectfully made to pp. 35-43 of the Petition for the appropriate authorities.)

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At page 16 of its brief, the Cincinnati Bar Association states:

> "The reason that the affidavits [denying the knowledge by Heitzler of the use of his name by Harmony Loan Company] are uncontradicted is that respondent at no time had the opportunity to contradict them."

This is *not true*.

The affidavits referred to appear in Petitioner's Appendix at pp. A-98 and A-99. They were filed along

with the Motion to Quash filed October 17, 1972 (Appendix, p. A-74-105). Oral argument before the Ohio Supreme Court was held on November 15, 1972, a month later, and the decision was rendered December 15, 1972. No motion to strike was filed by the Bar Association. No counter affidavits or exhibits, or any form of contradictory evidence was offered by the Bar Association. (Yet they had almost two months to attack them, if they desired, between the time they were filed and the time of the decision of the Ohio Supreme Court.)

The affidavits became part of the record when filed with the Motion to Quash. The Supreme Court of Ohio considered the affidavits and with no comment concerning their propriety denied the Motion to Quash. (Appendix, p. A-134). The only conclusion to be drawn is that the uncontradicted affidavits denying prior use of Judge Heitzler's name are true.

The Bar Association's anemic objection is untimely, unmeritorious, and utterly inappropriate.

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At page 20 of the brief of the Cincinnati Bar Association a blatant and serious misstatement appears. It reads:

> "Mr. Spampinato hit the nail on the head, T. 719, when he said it was an honor to have these dignitaries like Judge Heitzler on the Board. *It was good advertising as well as being an honor.*" (Emphasis added.)

The actual transcript at T-719 makes *no reference whatsoever to advertising.* In response to the question

inquiring why four more or less inactive members were on the Board of Directors of Harmony Loan, Mr. Spampinato stated:

> "Because we needed a nice Board of Directors and I think it was an honor for us to have such dignitaries like these people as we had as directors."

Counsel for the Bar Association has read into the evidence an unwarranted distortion and added the statement about advertising. This is crucial because it not only casts grave doubt on the entire argument set forth in the Bar Association brief, but as appears below, misstatements and the innuendoes are repeated again. Furthermore, part of the case against Petitioner dealt with whether or not he permitted the power of his office or the influence of his name to assist the business of another. Petitioner has contended all along the charges were unwarranted. See the argument in the Petition, pp. 53-60.

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At page 22 of the brief filed by the Cincinnati Bar Association, Judge Heitzler is accused of being under the influence of "cronyism," and in the paragraph preceeding this accusation it is stated:

> "Mr. Crisci [Chief Referee in the Domestic Relations Court] and Mr. and Mrs. Stone [an attorney who has appeared before Judge Heitzler] accompanied Judge Heitzler to Majorca. They were in the same 'group.' "

Respondent seems to have forgotten that the Majorca trip was sponsored by the Ohio State Bar Association.

T-18. Petitioner is now apparently being condemned for "cronyism" because he went on a Bar Association sponsored trip to Spain at which many other lawyers and wives were present.

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At page 23, the Cincinnati Bar Association again misstates the evidence. Heitzler testified that he ate both at the Hangar Restaurant *and* at Wong's Chinese Restaurant. T-35,36. The regular luncheons at the Hangar lasted "approximately a *year*," not a year and a half as the Bar Association contends. T-36. Included in the luncheon group were *not only* Dr. Stone, *but also* Judge Mathews, Judge Chase Davies, Police Chief Schott, Mr. Peter Donohue from Heitzler's own office and Mr. Crisci and Mr. Swallow — again the Bar Association has misstated the evidence.

Furthermore, the Bar Association then sets out a text book example of a "non-sequitur". Because Dr. Stone was a friend of Heitzler (T-1201) then this intimacy and friendship supposedly led a bartender in a cafe (The Side Door - not the Hangar or Wong's) to allegedly recommend that Matlock hire Dr. Stone because he could get somewhere with Heitzler. T-180-187. The conclusion does not follow from the evidence.

Not only is the conclusion unsubstantiated by the evidence, but the only reference to "get[ting] someplace with Judge Heitzler" appears at T-187 and does *not* refer to "get[ting] someplace with Judge Heitzler" at all, but refers instead to "moving" the case faster than it had been previously. T-187. *Judge Heitzler's name is not even mentioned there.* Also, it is cru-

cial to note that the reasons why Dr. Stone allegedly could "move" a divorce case faster than Matlock's then counsel were objected to as hearsay and said objections were properly sustained. T-187-193. Petitioner submits that counsel for the Respondent has now gone beyond the very record itself into evidence which was objected to and which objections were sustained and in his very brief to this Honorable Court attempts to infer that Dr. Stone could influence Petitioner - an unwarranted and serious innuendo. The certified transcript of the Hearing testimony was sent to this Honorable Court and reference is respectfully made to T-180-190 for the full account of this highly inappropriate and unfounded argument by Respondent.

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At page 27 of its brief, the Cincinnati Bar Association cites the testimony of Arthur J. Schuh, the collection attorney for Harmony Loan. T-337. Recall the Bar Association has charged, and the Ohio Supreme Court has found Heitzler guilty of lending the power of his office or the influence of his name to promote the business of Harmony Loan. Yet when the attorney who performed the collection work for Harmony Loan was asked:

> "Q What persons, to your knowledge, as of 1966 had any association with Harmony Loan?"

the following answer was given,

> "A The only one I knew that had any actual connection with them was Mr. Spampinato." (T-339).

Further Schuh testified at T-340:

> "Q . . . : at any time during your representation of the Harmony Loan Company were you ever aware that Judge Heitzler was a Director of that Company?"
>
> "A No, I was never told this."

The above quoted testimony (appearing as quoted and *not* at T-344 as the Bar Association states) utterly destroys the charge that Heitzler was allowing the power of his name or the influence of his office to aid the business of another. If the lawyer who handled the collections for Harmony Loan did not know Heitzler was connected with it, then it is impossible for Heitzler to have loaned the power of his office or the influence of his name to promote the business of Harmony. Hence no evidence existed upon which to base this finding of guilt.

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At page 31 of its brief, the Cincinnati Bar Association makes the following flagrant misstatement concerning the record in this case:

> "It is the height of impertinence on the part of petitioner's counsel to seek to make part of the record in this case by a *motion to quash* filed in the Supreme Court of Ohio the affidavit of Rufus 'Snowshoe' Smith as to why he took the Fifth Amendment[1] when called to testify at the hearing before the panel and the affidavit of his alleged attorney as to why Rufus 'Snowshoe' Smith took the Fifth Amendment." (Emphasis added.)

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[1]Rufus Smith also denied any complicity in an alleged bribery incident that was the subject of testimony during the hearings. See Appendix, pp. A-116, 117.

First, the record clearly shows that the affidavits were filed as a part of Petitioner's *Objections to The Findings of Fact and Not the Motion to Quash.* Appendix, pp. A-116 - A-118 and 106 to 119.

Second, the Objections were filed on October 20, 1972 and oral argument was held approximately a month later on November 15, 1972. No motion to strike was ever filed. The only logical conclusion is that these affidavits, now of record, are true. Respondent's objection thereto is untimely and unmeritorious.

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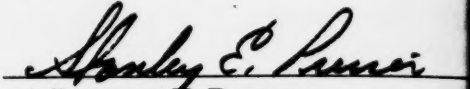
At page 32 of its brief, the Cincinnati Bar Association states that Rufus Smith "was hired for political reasons." The evidence supposedly supporting such statement appears on page 34 of the brief where witness Henry's testimony is quoted. Henry did not say Rufus Smith *was* hired for political reasons. He did say "I assumed that he was there for political reasons and that they were good and sufficient." However, the next quoted paragraph of Henry's testimony shows why Smith was hired and we quote from Respondent's brief, page 34:

> "Mr. Henry: Thank you. That is what I understand the whole thing to be. 'If you don't want another riot, Baby, get me a job.' "

It is well remembered in the Cincinnati community that racial riots occurred there some few years ago. It is also well known that Judge Heitzler helped quell such disturbances. If Rufus Smith was hired to prevent riots in "the colored community" then Judge Heitzler should

be lauded for his good judgment rather than criticized. Once again the Cincinnati Bar Association has failed to consider all the evidence.

For all the reasons set forth in the Petition, and those set forth in this Reply Memorandum, Certiorari should be granted.



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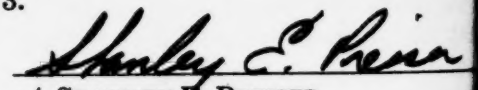
May 4, 1973.

## CERTIFICATE OF SERVICE

I hereby certify that I served three true and correct copies of the foregoing Petitioner's Reply Memorandum upon R. O. Klausmeyer, Esquire 2900 DuBois Tower, Cincinnati, Ohio 45202; John J. Getgey, Esquire, 615 Provident Tower, Cincinnati, Ohio 45202; and upon C. Donald Heile, Esquire, 3005 Carew Tower, Cincinnati, Ohio 45202, Counsel for the Cincinnati Bar Association, by depositing same in the United States mail, postage prepaid by air mail, this 4th day of May, 1973.



s/ STANLEY E. PREISER
Of Counsel for Petitioner